8-28-2014

Prehn v. Hodge Clerk's Record Dckt. 42465

IN THE SUPREME COURT OF THE STATE OF IDAHO

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs-Respondents, vs. MICHAEL L. HODGE II, Defendant-Appellant, and THE SOURCE STORE, LLC; THE SOURCE, LLC; GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Supreme Court Case No. 42465

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE PATRICK H. OWEN

ED GUERRICABEITIA	WILLIAM SMITH
ATTORNEY FOR APPELLANT	ATTORNEY FOR RESPONDENT
BOISE, IDAHO	BOISE, IDAHO

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
4/27/2012	NCOC	CCVIDASL	New Case Filed - Other Claims	Patrick H. Owen
	COMP	CCVIDASL	Complaint Filed	Patrick H. Owen
	SMFI	CCVIDASL	(5) Summons Filed	Patrick H. Owen
	AMEN	CCWATSCL	First Amended Complaint	Patrick H. Owen
	SMFI	CCWATSCL	(5) Summons Filed	Patrick H. Owen
5/1/2012	AFOS	CCHOLMEE	Affidavit Of Service 4.27.12	Patrick H. Owen
5/2/2012	AFOS	TCORTEJN	(3)Affidavit Of Service 05/01/2012	Patrick H. Owen
5/3/2012	APPL	CCMASTLW	Application for TRO and Motion for Preliminary Injunction	Patrick H. Owen
	AFFD	CCMASTLW	Affidavit of Donnelly Prehn	Patrick H. Owen
	MEMO	CCMASTLW	Memorandum in Support	Patrick H. Owen
	NOTD	CCMASTLW	(2) Notice Of Taking Deposition	Patrick H. Owen
	ORDR	DCKORSJP	Order Denying Plaintiff's Ex Parte Motion for Temporary Restraining Order	Patrick H. Owen
5/4/2012	NOHG	CCHOLMEE	Notice Of Hearing Re Application for Temporary Restraining Order and Motion for Preliminary Injunction 5.8.12@900AM	Patrick H. Owen
	HRSC	CCHOLMEE	Hearing Scheduled (Hearing Scheduled 05/08/2012 09:00 AM) Application for Temp Rest Order & Motion for Prelim Injunction	Patrick H. Owen
5/7/2012	AFOS	CCKHAMSA	Affidavit Of Service (04/30/12)	Patrick H. Owen
5/8/2012	AFFD	CCVIDASL	Second Affidavit of Donnelly Prehn in Support of Application for Temporary Restraining Order	Patrick H. Owen
	DCHH	CCHUNTAM	Hearing result for Hearing Scheduled scheduled on 05/08/2012 09:00 AM: District Court Hearing Held Court Reporter: Kasey Redlich Number of Transcript Pages for this hearing estimated: Less than 100 pages	Patrick H. Owen
5/21/2012	NOAP	TCORTEJN	Notice Of Appearance (Boyle for Christopher Claiborne)	Patrick H. Owen
	ORDR	DCOLSOMA	Order RE: Dissolution of The Source Store, LLC and Related Matters	Patrick H. Owen
	NOAP	TCORTEJN	Notice Of Appearance (Crafts for George Brown)	Patrick H. Owen
5/31/2012	NOTC	CCSWEECE	Notice Vacating 30(b)(6) Deposition of the Source, LLC	Patrick H. Owen
	NOTC	CCSWEECE	Notice Vacating 30(b)(6) Deposition of the Source Store, LLC	Patrick H. Owen
6/29/2012	AMCO	CCAMESLC	Second Amended Complaint Filed	Patrick H. Owen
	SMFI	CCWATSCL	(5) Summons Filed	Patrick H. Owen
7/18/2012	ANSW	MCBIEHKJ	Answer (E Don Copple for M Hodge and The Source)	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
7/19/2012	ANSW	CCNELSRF	The Source Store, LLC Answer to Plf's Second Amended Complaint (Geier for The Source Store LLC)	Patrick H. Owen
7/23/2012	MISC	CCNELSRF	Verification of The Source Store, LLC Answer to Plf's Second Amended Complaint (Geier for The Source Store LLC)	Patrick H. Owen
7/27/2012	NOTS	CCNELSRF	Notice Of Service	Patrick H. Owen
8/2/2012	ANSW	MCBIEHKJ	George Browns Answer to Second Amended Complaint	Patrick H. Owen
8/13/2012	NOTC	DCJOHNSI	Notice of Scheduling Conf	Patrick H. Owen
	HRSC	DCJOHNSI	Hearing Scheduled (Scheduling Conference 09/06/2012 04:00 PM)	Patrick H. Owen
8/14/2012	ANSW	CCMEYEAR	Answer to Sccond Amended Complaint, Counterclaim and Crossclaim	Patrick H. Owen
8/29/2012	ANSW	CCSWEECE	Michael L Hodge II and The Source LLCs Answer to Christopher Claibornes Counterclaims Against Plaintiffs and Cross Claims Against Co-Defendants	Patrick H. Owen
	NOTS	CCCHILER	Notice Of Service	Patrick H. Owen
8/30/2012	ANSW	MCBIEHKJ	Answer to Counterlaims Against Plaintiffs and Cross Claims Against Co Defendants	Patrick H. Owen
9/4/2012	NOTS	CCHEATJL	Notice Of Service	Patrick H. Owen
	RPLY	CCWRIGRM	Reply to Counterclaim of Christopher Claiborne	Patrick H. Owen
9/6/2012	NOTS	CCMEYEAR	Notice Of Service	Patrick H. Owen
	HRHD	DCJOHNSI	Hearing result for Scheduling Conference scheduled on 09/06/2012 04:00 PM: Hearing Held in chambers	Patrick H. Owen
9/7/2012	NOSV	CCHOLMEE	Notice Of Service	Patrick H. Owen
9/21/2012	MOTN	CCDEREDL	Motion to Compel Responses of the Source LLC to Plaintiffs Discovery Requests	Patrick H. Owen
	AFFD	CCDEREDL	Affidavit of Matthew McGee in Support of Motion to Compel Responses of the Source LLC to Plaintiffs Discovery Requests	Patrick H. Owen
	MEMO	CCDEREDL	Memorandum in Support of Motion to Compel Responses of the Source LLC to Plaintiffs discovery requests	Patrick H. Owen
	NOHG	CCDEREDL	Notice Of Hearing (10-16-12 @ 3PM)	Patrick H. Owen
9/25/2012	NOTS	CCHEATJL	Notice Of Service	Patrick H. Owen
9/26/2012	ORDR	DCOLSOMA	Order Governing Proceedings and Setting Trial	Patrick H. Owen
9/27/2012	HRSC	DCOLSOMA	Hearing Scheduled (Court Trial 04/01/2013 09:00 AM) 4 Days	Patrick H. Owen
	HRSC	DCOLSOMA	Hearing Scheduled (Pretrial Conference 03/18/2013 03:00 PM)	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
9/27/2012	HRSC	DCOLSOMA	Hearing Scheduled (Status 02/21/2013 03:00 PM) Telephonic	Patrick H. Owen
10/1/2012	WITN	CCMEYEAR	Plaintiff's Expert Witness Disclosure	Patrick H. Owen
10/2/2012	MOTN	CCDEREDL	Motion to Disqualify Without Cause	Patrick H. Owen
	NOTS	CCWEEKKG	Notice Of Service	Patrick H. Owen
10/4/2012	MOTN	CCMEYEAR	Defendant The Source LLC's Motion for Protective Order and Objection to Plaintiff's Moitn to Compel	Patrick H. Owen
	AFFD	CCMEYEAR	Affidavit of Counsel in Support of Motion for Portective Order and In Opposition to Plaintiffs' Motion to Compel	Patrick H. Owen
	AFFD	CCMEYEAR	Affidavit of Michael Hodge II in Support of Motion for Protective Order and In Opposition to Plaintiffs' Motion to Compel	Patrick H. Owen
	MEMO	CCMEYEAR	Memorandum in Support of Motion for Protective Order and In Opposition to Plaintiffs' Motion to Compel	Patrick H. Owen
	MOTN	CCMEYEAR	Defendant, The Source LLC's Motion to Shorten Time for Hearing	Patrick H. Owen
10/9/2012	HRSC	CCHEATJL	Notice Of Hearing Scheduled (Motion For Protective Order 10/16/2012 03:00 PM)	Patrick H. Owen
10/12/2012	REPL	CCKINGAJ	Reply in Support of Motion to Compel Responses of the Source, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	AFFD	CCKINGAJ	Second Affidavit of Matthew J. McGee in Support of Motion to Compel Responses of the Source, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
10/16/2012	DCHH	CCHUNTAM	Hearing result for Motion For Protective Order scheduled on 10/16/2012 03:00 PM: District Court Hearing Held Court Reporter: Kasey Redlich Number of Transcript Pages for this hearing estimated: Less than 100 pages	Patrick H. Owen
10/17/2012	NOSV	CCBOYIDR	Notice Of Service	Patrick H. Owen
10/18/2012	ORDR	CCHUNTAM	Order Granting Motion to Disqualify Without Cause Under IRCP40(d)(1)(G) [Judge Sticklen]	Patrick H. Owen
10/24/2012	NOTS	CCKHAMSA	Notice Of Service	Patrick H. Owen
10/25/2012	NOTS	CCMEYEAR	Notice Of Service	Patrick H. Owen
11/1/2012	MISC	CCNELSRF	Def's Michale Hodge II and the Source LLC's Expert Witness Disclosure	Patrick H. Owen
11/2/2012	NOTS	CCHEATJL	Notice Of Service	Patrick H. Owen
11/16/2012	NOSV	CCBOYIDR	Notice Of Service of Plaintiffs/Counterdefendants' Answers and Responses to Defendant Michael L Hodge II'S First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
11/20/2012	NODT	CCKHAMSA	Notice Of Deposition Duces Tecum To Michael Baldner	Patrick H. Owen
	NODT	CCKHAMSA	Notice Of Deposition Duces Tecum To Chris Halstead	Patrick H. Owen
11/26/2012	NOTC	MCBIEHKJ	Notice of Videotaped Trial Deposition	Patrick H. Owen
11/27/2012	NODT	CCSWEECE	Notice Of Taking Deposition Duces Tecum to Neal Stuart	Patrick H. Owen
11/28/2012	NOTS	CCWEEKKG	Notice Of Service	Patrick H. Owen
	ANSW	CCWEEKKG	The Source Store, LLC's Fifth Supplemental Answer to Plaintiff's First Set of Interrogatories and Requests for Production (Judy L. Geier for The Source Store LLC)	Patrick H. Owen
	MOTN	CCSULLJA	Motion to Compel Responses of the Source Store, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	AFSM	CCSULLJA	Affidavit of Tiffiny Hudak In Support Of Motion to Compel Responses of the Source Store, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	AFSM	CCSULLJA	Affidavit of Matthew J. McGee In Support Of Motion to Compel Responses of the Source Store, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	MEMO	CCSULLJA	Memorandum in Support of Motion to Compel Responses of the Source Store, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	NOHG	CCSULLJA	Notice Of Hearing (12/18/12 @ 3:30 PM)	Patrick H. Owen
	HRSC	CCSULLJA	Hearing Scheduled (Hearing Scheduled 12/18/2012 03:30 PM) Motion to Compel	Patrick H. Owen
11/30/2012	NOTS	CCMEYEAR	Notice Of Service	Patrick H. Owen
12/4/2012	MEMO	CCWRIGRM	Plaintiffs Memorandum of Fees and Costs re Motion to Compel	Patrick H. Owen
	AFFD	CCWRIGRM	Affidavit of Michael O Roe in Support of Memorandum	Patrick H. Owen
	NOTD	CCWRIGRM	(2) Notice Of Taking Deposition	Patrick H. Owen
12/5/2012	NOTC	CCVIDASL	Notice of Deposition to Christopher Claiborne	Patrick H. Owen
	NOTC	CCVIDASL	Notice of Deposition to Blair Bews	Patrick H. Owen
	NOTC	CCVIDASL	Notice of Deposition to Jade Welch	Patrick H. Owen
	NOTC	CCVIDASL	Notice of Deposition to Susan Cook	Patrick H. Owen
12/7/2012	NOTC	CCMEYEAR	Notice of Rule 30(b)(6) Depositioin to the Source Store LLC	Patrick H. Owen
	NOTC	CCMEYEAR	Notice of Rule 30(b)(6) Deposition to the Source LLC	Patrick H. Owen
12/10/2012	NOTS	MCBIEHKJ	Notice Of Service	Patrick H. Owen
12/11/2012	OBJE	CCBOYIDR	Defendant The Source Store LLC's to Plaintiff's Motion to Compel Objection	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
12/11/2012	AFFD	CCBOYIDR	Affidavit of Michael L Hodge, II, in Support of Objection to Motion to Compel Responses of The Source Store, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	AFFD	CCBOYIDR	Affidavit of George "Mike" Brown in Support of Objection to Motion to Compel Responses of The Source Store, LLC to Plaintiffs' Discovery Requests	Patrick H. Owen
	AFFD	CCBOYIDR	Affidavit of Judy L Geier in Support of Objection to Motion to Compel Responses of The Source Store, LLC to plaintiffs' Discovery Requests	Patrick H. Owen
	MEMO	CCBOYIDR	Defendant The Source Store, LLC's Memorandum in Support of Objection to Plaintiffs' Motion to Compel	Patrick H. Owen
12/12/2012	MOTN	CCMEYEAR	Motion to Quash Deposition Subpoena Duces Tecum	Patrick H. Owen
	AFFD	CCMEYEAR	Affidavit of Michael E Baldner in Support of Motion to Quash the Depositon Subpoena Duces Tecum to Michael Baldner	Patrick H. Owen
	MEMO	CCMEYEAR	Memorandum in Support of Motion to Quash Deposition Subpoena Duces Tecum to Michael Baldner	Patrick H. Owen
12/13/2012	NOTS	CCHEATJL	Notice Of Service	Patrick H. Owen
12/14/2012	MOTN	CCHEATJL	Defendant, The Source, LLC's Motion And Objection To Disallow Plaintiffs' Attorney Fees and Costs	Patrick H. Owen
	AFFD	CCHEATJL	Affidavit Of Ed Guerricabeitia In Support Of Motion And Objection To Disallow Plaintiffs' Attorney Fees and Costs	Patrick H. Owen
	MEMO	CCHEATJL	Defendant, The Source, LLC's Memorandum In Support Of Motion And Objection To Disallow Plaintiffs' Attorney Fees and Costs	Patrick H. Owen
	HRSC	CCHEATJL	Notice Of Hearing Scheduled (Motion 01/22/2013 02:30 PM) Motion And Objection	Patrick H. Owen
	RPLY	CCBOYIDR	Reply in Support of Motion to Compel Responses of the Source Store LLC to Plaintiff's Discovery Requests	Patrick H. Owen
12/17/2012	NOTC	TCLAFFSD	Notice Vacating Deposition Of Michael Baldner	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Rule 30 (b)(6) Deposition To The Source, LLC	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Rule 30 (b)(6) Deposition To The Source, Store LLC	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Videotaped Trial Preservation Deposition Duces Tecum Of Jesse Arp	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To Jade Welch	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To Chris Halstead	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
12/17/2012	AMEN	TCLAFFSD	Amended Notice Of Deposition To Christopher Claiborne	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To Michael Hodge II	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To George M. Brown	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To Blair Bews	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To Susan Cook	Patrick H. Owen
	AMEN	TCLAFFSD	Amended Notice Of Deposition To Neal Stuart	Patrick H. Owen
12/18/2012	DCHH	DCOLSOMA	Hearing result for Hearing Scheduled scheduled on 12/18/2012 03:30 PM: District Court Hearing Held Court Reporter: K. Redlich Number of Transcript Pages for this hearing estimated: less than 100	Patrick H. Owen
12/27/2012	AMEN	CCSWEECE	Second Amended Notice of Rule 30 (b)(6) Deposition to the Source Store LLC	Patrick H. Owen
	AMEN	CCSWEECE	Second Amended Notice of Rule 30(b)(6) Deposition to the Source LLC	Patrick H. Owen
12/28/2012	NOTS	CCRANDJD	(2) Notice Of Service	Patrick H. Owen
1/4/2013	NOTD	CCPINKCN	Second Amended Notice of Deposition to Michael Hodge II	Patrick H. Owen
	NOTD	CCPINKCN	Second Amended Notice to Deposition to Susan Cook	Patrick H. Owen
	NOTD	CCPINKCN	Second Amended Notice of Deposition to Blair Bews	Patrick H. Owen
	NOTD	CCPINKCN	Second Amended Notice of Deposition to George M Brown	Patrick H. Owen
	NOTD	CCPINKCN	Second Amended Notice of Deposition to Chris Halstead	Patrick H. Owen
	NOTD	CCPINKCN	Second Amended Notice of Deposition Duces Tecum to Neal Stuart	Patrick H. Owen
	NOTD	CCPINKCN	Third Amended Notice of Deposition to the Source LLC	Patrick H. Owen
	NOTD	CCPINKCN	Third Amended Notice of Deposition to The Source Store LLC	Patrick H. Owen
	NOTS	CCPINKCN	Notice Of Service	Patrick H. Owen
1/14/2013	NOTC	MCBIEHKJ	Notice Vacating Deposition of Jade Welch	Patrick H. Owen
1/15/2013	OPPO	CCMEYEAR	Plaintiff's Opposition to Motion and Objection to Disallow Plaintiff's Attorney's Fees and Costs	Patrick H. Owen
	AFFD	CCMEYEAR	Affidavit of Matthew J Mcgee in Support of Plaintiff's Opposition to Motion and Objection to Disallow Plaintiff's Attorney's Fees and Costs	Patrick H. Owen
1/17/2013	AFFD	CCVIDASL	Affidavit of Michael Hodge II	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
1/17/2013	AFFD	CCVIDASL	Affidavit of Janae Young	Patrick H. Owen
	MISC	CCVIDASL	Report of Wind Up	Patrick H. Owen
	NOTS	CCVIDASL	Notice Of Service of the Source Store LLCs Eighth Supplemental Answers to Plaintiffs First Set of Interrogatories and Requests for Production	Patrick H. Owen
1/18/2013	MISC	CCTHIEKJ	Defendant, The Source, LLC's Reply to Plaintiffs' Opposition to Motion and Objection to Disallow Plaintiffs' Attorney's Fees and Costs	Patrick H. Owen
1/22/2013	DCHH	CCHUNTAM	Hearing result for Motion scheduled on 01/22/2013 02:30 PM: District Court Hearing Hel Court Reporter: none Number of Transcript Pages for this hearing estimated: Motion And Objection	Patrick H. Owen
1/23/2013	AMEN	CCSWEECE	Third Amended Notice of Deposition to Chris Halstead	Patrick H. Owen
2/12/2013	AMEN	CCTHIEKJ	Second Amended Notice of Videotaped Trial Preservation Deposition Duces Tecum of Jesse ARP	Patrick H. Owen
2/19/2013	NOTC	CCSWEECE	Notice of Vacating Deposition of Christopher Claiborne	Patrick H. Owen
	NOTC	CCSWEECE	Notice of Vacating Deposition of Chris Halstead	Patrick H. Owen
	NOTC	CCSWEECE	Notice of Vacating Deposition of Susan Cook	Patrick H. Owen
	NOTC	CCSWEECE	Notice of Vacating Deposition of Blair Bews	Patrick H. Owen
2/21/2013	MEMO	DCTAYLME	Memorandum Decision and Order RE: Costs and Fees	Patrick H. Owen
	NOTC	CCTHIEKJ	Notice Vacating Deposition of Neal Stuart	Patrick H. Owen
2/22/2013	NOTC	CCSWEECE	Notice Vacating Deposition of Jesse Arp	Patrick H. Owen
3/1/2013	MOTD	CCTHIEKJ	Joint Motion To Dismiss Derivative Claims	Patrick H. Owen
	AFSM	CCTHIEKJ	Affidavit of Ed Guerricabeitia In Support Of Joint Motion to Dismiss Derivative Claims	Patrick H. Owen
	MEMO	CCTHIEKJ	Memorandum in Support of Joint Motion to Dismiss Derivative Claims	Patrick H. Owen
3/5/2013	STIP	CCHOLMEE	Stipulation to Seal Exhibit G Attached to Affidavit of Ed Guerricabeitia and Replace with Amended Affidavit of Ed Guerricabeitia	Patrick H. Owen
	AFFD	CCHOLMEE	Amended Affidavit of Ed Guerricabeitia in Support of Motion	Patrick H. Owen
3/8/2013	STIP	CCHOLMEE	Stipulation for Voluntary Dismissal with Prejudice of George M Brown	Patrick H. Owen
3/11/2013	STIP	CCOSBODK	Stipulation For Voluntary Dismissal With Prejudice	Patrick H. Owen
3/13/2013	OBJT	CCSWEECE	Objection and Response to Joint Motion to Dismiss Derivative Claims	Patrick H. Owen
3/18/2013	PDIW	CCSWEECE	Plaintiffs' List of Witnesses For Trial	Patrick H. Owen

Donnelly Prehn, Dwight Bandak, vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
3/18/2013	PLAE	CCSWEECE	Plainitiff Exhibit List for Trial	Patrick H. Owen
	WITN	CCKHAMSA	Defendant The Source Store, LLC's Witness List	Patrick H. Owen
	EXLT	CCKHAMSA	Defendant The Source Store, LLC's Exhibit List	Patrick H. Owen
	MISC	TCLAFFSD	Defendants, Michael L. Hodge, II and The Source, LLC's Witness List	Patrick H. Owen
	MISC	TCLAFFSD	Defendants, Michael L. Hodge, II and The Source, LLC's Exhibit List	Patrick H. Owen
3/19/2013	HRHD	CCHUNTAM	Hearing result for Pretrial Conference scheduled on 03/18/2013 03:00 PM: Hearing Held	Patrick H. Owen
3/20/2013	NOTS	CCMEYEAR	Notice Of Service of Plaintiffs' Supplemental Answers and Responses to Defendant the Source LLC's First Set of Interrogatories and Requests for Production of Documents	Patrick H. Owen
	NOTS	CCMEYEAR	Notice Of Service of Plaintiff's Supplemental Answers and Responses to Defendant Michael L Hodge II's First Set of Interrogatories and Request for Production of Documents	Patrick H. Owen
	MOTN	CCMEYEAR	Defendant's Motion to Exclude Plaintiffs' Expert Witnesses and Expert Opionions on Damages, Valuations or any Other Matter	Patrick H. Owen
	MEMO	CCMEYEAR	Defendants' Memorandum in Support of Moiton to Exclude Plaintiffs' Expert Witnesses and Expert Opinions on Damages and Valuations	Patrick H. Owen
	AFSM	CCMEYEAR	Affidavit In Support Of Motion	Patrick H. Owen
	NOTH	CCMEYEAR	Notice Of Hearing (04/01/2013 @ 9:00 am)	Patrick H. Owen
	MOTN	CCSWEECE	Motion to Quash Trial Subpoena To Michael Bladner	Patrick H. Owen
	AFSM	CCSWEECE	Affidavit of Michael E Baldner In Support Of Motion to Quash Trial Subpoena To Michael Baldner	Patrick H. Owen
	MEMO	CCSWEECE	Memorandum in Support of Motion to Quash Trial Subpoena To Michael Baldner	Patrick H. Owen
	MOTN	CCSWEECE	Motion to Shorten Time for Hearing of Motion to Quash Trial Subpoena To Michael Bladner	Patrick H. Owen
	NOHG	CCSWEECE	Notice Of Hearing RE: Deponent Michael Baldners Motion to Quash Trial Subpoena and Motion to Shorten Time for Hearing of Motion to Quash Trial Subpoena To Michael Bladner	Patrick H. Owen
	HRSC	CCSWEECE	Hearing Scheduled (Motion 04/01/2013 08:30 AM) Motion to Quash Trial Subpoena and Motion to Shorten Time	Patrick H. Owen
	MOTN	CCOSBODK	Motion To Exlude Undisclosed Witnesses	Patrick H. Owen
	MEMO	CCOSBODK	Memorandum In Support Of Plaintiffs Motion To Exclude Undisclosed Witnesses	Patrick H. Owen
	AFSM	CCOSBODK	Affidavit In Support Of Motion	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
3/22/2013	RQST	CCKINGAJ	Request for Delivery of Plaintiffs' Exhibits	Patrick H. Owen
3/25/2013	NOTS	MCBIEHKJ	Notice Of Service	Patrick H. Owen
	NOTS	MCBIEHKJ	Notice Of Service	Patrick H. Owen
	MOTN	MCBIEHKJ	Motion to Quash Trial Subpoena	Patrick H. Owen
	AFFD	MCBIEHKJ	Affidavit of Matthew McGee in SUpport of Response to Motion to Quash	Patrick H. Owen
	REPL	MCBIEHKJ	Response to Motion to Exclude Expert Witnesses and Expert Opinions on Damages	Patrick H. Owen
	AFFD	MCBIEHKJ	Affidavit of Matthew J McGee in Support of Response	Patrick H. Owen
	MISC	MCBIEHKJ	Plaintiffs Amended List of Exhibits for Trial	Patrick H. Owen
3/28/2013	STIP	CCPINKCN	Stipulation for Voluntary Dismissal with Prejudice	Patrick H. Owen
	MEMO	CCMEYEAR	Reply Memorandum in Support of Motion to Quash Trial Subpoena to Michael Baldner	Patrick H. Owen
	BREF	CCHEATJL	Michael L Hodge II And The Source LLC's Trial Brief	Patrick H. Owen
3/29/2013	STIP	CCHEATJL	Stipulation For VVoluntary Dismissal With Prejudice	Patrick H. Owen
4/1/2013	PTMM	CCHEATJL	Plaintiffs' Pretrial Memorandum	Patrick H. Owen
	DCHH	CCHUNTAM	Hearing result for Motion scheduled on 04/01/2013 08:30 AM: District Court Hearing Hel Court Reporter: Kasey Redlich Number of Transcript Pages for this hearing estimated: Less than 100 pages	Patrick H. Owen
	HRVC	CCHUNTAM	Hearing result for Court Trial scheduled on 04/01/2013 09:00 AM: Hearing Vacated 4 Days	Patrick H. Owen
4/30/2013	HRVC	CCHUNTAM	Hearing result for Status scheduled on 02/21/2013 03:00 PM: Hearing Vacated Telephonic	Patrick H. Owen
	HRSC	CCHUNTAM	Hearing Scheduled (Scheduling Conference 06/10/2013 03:00 PM)	Patrick H. Owen
6/6/2013	ORDR	DCJOHNSI	Order to Seal Exhibit G and Replace Affidavit of Guerricabeitia	Patrick H. Owen
	ORDR	DCJOHNSI	Order Granting Stip for Voluntary Dismissal w/ Prej- as to certain claims only	Patrick H. Owen
	ORDR	DCJOHNSI	Order Granting Stip for Voluntary Dismissal w/ Prej= George Brown only	Patrick H. Owen
	ORDR	DCJOHNSI	Order Granting Stip for Voluntary Dismissal w/ Prej-Claiborne	Patrick H. Owen
	CDIS	DCJOHNSI	Civil Disposition entered for: Brown, George M, Defendant; Bandak, Dwight, Plaintiff; Prehn, Donnelly, Plaintiff. Filing date: 6/6/2013	Patrick H. Owen
	CDIS	DCJOHNSI	Civil Disposition entered for: Claiborne, Christopher, Defendant; Bandak, Dwight, Plaintiff; Prehn, Donnelly, Plaintiff. Filing date: 6/6/2013	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
6/12/2013	HRHD	CCHUNTAM	Hearing result for Scheduling Conference scheduled on 06/10/2013 03:00 PM: Hearing Held	Patrick H. Owen
6/19/2013	HRSC	CCHUNTAM	Hearing Scheduled (Court Trial 12/02/2013 09:00 AM)	Patrick H. Owen
	HRSC	CCHUNTAM	Hearing Scheduled (Pretrial Conference 11/12/2013 03:00 PM)	Patrick H. Owen
6/25/2013	MOTN	CCNELSRF	Def's Motion to File an Amened Witness List and Exhibit List	Patrick H. Owen
	AFSM	CCNELSRF	Affidavit of Ed Guerricabeitia In Support Of Def's Motion to File an Amened Witness List and Exhibit List	Patrick H. Owen
	MISC	MCBIEHKJ	Source Store Amended Exhibit List	Patrick H. Owen
	NOTS	MCBIEHKJ	Notice Of Service	Patrick H. Owen
6/28/2013	NOTH	CCMEYEAR	Notice Of Hearing (07/23/2013 @ 4:30pm)	Patrick H. Owen
	HRSC	CCMEYEAR	Hearing Scheduled (Motion 07/23/2013 04:30 PM) Motion to File an Amended Witness List	Patrick H. Owen
7/16/2013	OBJC	CCPINKCN	Plaintiffs' Objection to Defendants' Motion to File an Amended Witness List and Exhibit List	Patrick H. Owen
7/17/2013	MOTN	TCLAFFSD	Motion For Withdrawal Of Counsel	Patrick H. Owen
	AFFD	TCLAFFSD	Affidavit of Judy L Geier in Support of Motion for Withdrawal of Counsel	Patrick H. Owen
7/18/2013	NOHG	CCVIDASL	Notice Of Hearing	Patrick H. Owen
	HRSC	CCVIDASL	Hearing Scheduled (Motion to Withdraw 08/06/2013 03:30 PM)	Patrick H. Owen
7/19/2013	RESP	CCNELSRF	Def's Response To Plf's Objection to Def's Motion to File An Amended Witness List and Exhibit List	Patrick H. Owen
7/24/2013	DCHH	CCHUNTAM	Hearing result for Motion scheduled on 07/23/2013 04:30 PM: District Court Hearing Hel Court Reporter: Roxanne Patchell Number of Transcript Pages for this hearing estimated: Less than 100 pages	Patrick H. Owen
7/26/2013	WITN	CCHEATJL	Defendants, Michael L Hodge, II and The Source LLC's Amended Witness List	Patrick H. Owen
8/6/2013	DCHH	CCHUNTAM	Hearing result for Motion to Withdraw scheduled on 08/06/2013 03:30 PM: District Court Hearing Held Court Reporter: Tiffany Fisher Number of Transcript Pages for this hearing estimated: Less than 100 pages	Patrick H. Owen
8/12/2013	ORDR	CCHUNTAM	Order For Withdrawal of Attorney of Record (Judy Geier for The Source Store, LLC)	Patrick H. Owen
8/14/2013	NOTS	CCREIDMA	Notice Of Service	Patrick H. Owen
8/26/2013	NOTD	CCMEYEAR	Notice Of Taking Deposition to Peter Butler	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
8/26/2013	NOAP	CCHEATJL	Notice Of Appearance For The Source Store LLC In Substition For Proior Counsel (ED Guerricabetia)	Patrick H. Owen
9/20/2013	NOTC	CCNELSRF	Notice of Vacating Depo of Peter Butler	Patrick H. Owen
	STIP	CCNELSRF	Stipulation for Scheduling and Planning	Patrick H. Owen
11/5/2013	AMEN	TCLAFFSD	Defendants, Michael L. Hodge, II And The Source, LLC's Amended Exhibit List	Patrick H. Owen
11/12/2013	AMEN	TCLAFFSD	Plaintiffs' Second Amended List Of Exhibit For Trial	Patrick H. Owen
11/13/2013	HRHD	CCHUNTAM	Hearing result for Pretrial Conference scheduled on 11/12/2013 03:00 PM: Hearing Held	Patrick H. Owen
11/27/2013	STIP	CCHEATJL	Stipulation To The Parties' Trial Exhibits	Patrick H. Owen
	NOTH	TCLAFFSD	Notice Of Hearing Re: Deponent Michael Baldner's Motion to Quash Trial Subpoena (12/2/13 09:00 AM)	Patrick H. Owen
12/2/2013	DCHH	CCHUNTAM	Hearing result for Court Trial scheduled on 12/02/2013 09:00 AM: District Court Hearing Hel Court Reporter: Kasey Redlich Number of Transcript Pages for this hearing estimated: More than 500 pages	Patrick H. Owen
12/23/2013	MISC	CCREIDMA	Defendant's Closing Argument	Patrick H. Owen
	MISC	TCLAFFSD	Plaintiff's Closing Argument	Patrick H. Owen
1/3/2014	MISC	CCSCOTDL	Defendants Rebuttal Closing Argument	Patrick H. Owen
	RSPN	CCHEATJL	Plaintiffs' Closing Response	Patrick H. Owen
2/19/2014	FIND	DCTAYLME	Findings Of Fact and Conclusions of Law	Patrick H. Owen
3/5/2014	MEMO	CCBOYIDR	Memorandum of Attorney Fees and Costs	Patrick H. Owen
	AFFD	CCBOYIDR	Affidavit in Support of Memorandum of Attorney Fees and Costs	Patrick H. Owen
3/18/2014	MOTN	TCLAFFSD	Defendants' Motion For Reconsideration Of Courts Findings of Facts and Conclusions of Law	Patrick H. Owen
	AFSM	TCLAFFSD	Affidavit of Michael Hodge, II Of Motion For Reconsideration Of Court's Findings of Facts and Conclusions of Law	Patrick H. Owen
	AFSM	TCLAFFSD	Affidavit Of George Brown In Support Of Motion For Reconsideration Of Court's Findings of Facts and Conclusions of Law	Patrick H. Owen
	MEMO	TCLAFFSD	Defendants' Memorandum In Support Of Motion For Reconsideration Of Court's Findings of Facts and Conclusions of Law	Patrick H. Owen
3/19/2014	OBJT	TCLAFFSD	Defendants' Objection To Plaintiffs' Memorandum Of Attorney Fees and Costs And Motion To Disallow Attorney Fees and Costs	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
3/19/2014	AFFD	TCLAFFSD	Affidavit of Ed Guerricabetia In Support of Defendants' Objection To Plaintiffs' Memorandum Of Attorney Fees and Costs And Motion To Disallow Attorney Fees and Costs	Patrick H. Owen
	MEMO	TCLAFFSD	Defendants' Memorandum In Support of Objection To Plaintiffs' Memorandum Of Attorney Fees and Costs And Motion To Disallow Attorney Fees and Costs	Patrick H. Owen
	NOTH	TCLAFFSD	Notice Of Hearing (4.24.14 at 3:30 PM)	Patrick H. Owen
	HRSC	TCLAFFSD	Hearing Scheduled (Hearing Scheduled 04/24/2014 03:30 PM) Objection To Plaintiffs' Memorandum Of Attorney Fees and Costs And Motion To Disallow Attorney Fees and Costs & Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law	Patrick H. Owen
4/1/2014	JDMT	DCJOHNSI	Judgment for Donnelly Prehn	Patrick H. Owen
	JDMT	DCJOHNSI	Judgment for The Source Store	Patrick H. Owen
	CDIS	DCJOHNSI	Civil Disposition entered for: The Source Store LLC, Defendant; The Source LLC, Defendant; Hodge, Michael L II, Defendant. Filing date: 4/1/2014	Patrick H. Owen
	CDIS	DCJOHNSI	Civil Disposition entered for: Hodge, Michael L II, Defendant; The Source Store LLC, Defendant; Prehn, Donnelly, Plaintiff. Filing date: 4/1/2014	Patrick H. Owen
	STAT	DCJOHNSI	STATUS CHANGED: closed pending clerk action	Patrick H. Owen
4/7/2014	AMEN	TCLAFFSD	Amended Notice of Hearing (4.29.14 at 3:30 PM)	Patrick H. Owen
	CONT	TCLAFFSD	Continued (Hearing Scheduled 04/29/2014 03:30 PM) Objection To Plaintiffs' Memorandum Of Attorney Fees and Costs And Motion To Disallow Attorney Fees and Costs & Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law	Patrick H. Owen
4/15/2014	MOTN	CCNELSRF	Motion for Reconsideration	Patrick H. Owen
4/18/2014	HRSC	CCHEATJL	Notice Of Hearing Scheduled (Motion 04/29/2014 03:00 PM) Motion For Reconsideration	Patrick H. Owen
4/21/2014	HRVC	DCJOHNSI	Hearing result for Hearing Scheduled scheduled on 04/29/2014 03:30 PM: Hearing Vacated Objection To Plaintiffs' Memorandum Of Attorney Fees and Costs And Motion To Disallow Attorney Fees and Costs & Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law	Patrick H. Owen
4/22/2014	MEMO	CCVIDASL	Defendants Memorandum in Opposition to Plaintiffs Motion for Reconsideration	Patrick H. Owen
	RSPS	CCHOLMEE	Response to Motion for Reconsideration of Court's Finding of Fact and Conclusions of Law	Patrick H. Owen
	OPPO	CCHOLMEE	Opposition to Objection to Memorandum	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
4/25/2014	RPLY	CCWEEKKG	Defendant's Reply Memorandum to Plaintiffs' Response to Defendants' Motion for Reconsideration of Court's Finding of Fact and Conclusion of Law	Patrick H. Owen
	RSPN	CCWEEKKG	Defendants' Response Memorandum to Plaintiffs; Opposition to Defendants Objection to Plaintiffs' memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs	Patrick H. Owen
	REPL	TCLAFFSD	Reply In Support of Motion For Reconsideration	Patrick H. Owen
4/29/2014	DCHH	DCJOHNSI	Hearing result for Motion scheduled on 04/29/2014 03:00 PM: District Court Hearing Hel Court Reporter: redlich Number of Transcript Pages for this hearing estimated: Motion For Reconsideration-50	Patrick H. Owen
7/22/2014	MEMO	DCJOHNSI	Memorandum Decision and Order on Costs and Fees	Patrick H. Owen
	MISC	DCJOHNSI	Amended Judgment-Source Store	Patrick H. Owen
	MISC	DCJOHNSI	Amended Judgment-Prehn	Patrick H. Owen
	MEMO	DCJOHNSI	Memorandum Decision and Order on Motions to Reconsider	Patrick H. Owen
8/18/2014	MISC	DCJOHNSI	2nd Amended Judgment for The Source Store	Patrick H. Owen
	MISC	DCJOHNSI	2nd Amended Judgment-Prehn	Patrick H. Owen
	STAT	DCJOHNSI	STATUS CHANGED: closed	Patrick H. Owen
8/28/2014	APSC	CCTHIEBJ	Appealed To The Supreme Court	Patrick H. Owen
	NOTA	CCTHIEBJ	NOTICE OF APPEAL	Patrick H. Owen
9/10/2014	MOTN	TCMEREKV	Motion For Entry Of Final Judgment	Patrick H. Owen
	AFFD	TCMEREKV	Affidavit Of Counsel In Support Of Motion For Entry Of Final Judgment	Patrick H. Owen
9/12/2014	OBJE	CCBOYIDR	Objection to Proposed Judgment	Patrick H. Owen
10/3/2014	MISC	DCJOHNSI	3rd Amended Judgment	Patrick H. Owen
10/10/2014	AMEN	CCVIDASL	Amended Notice of Appeal	Patrick H. Owen
10/17/2014	SUBC	CCSCOTDL	Notice of Substitution Of Counsel (William Smith for Plaintiff)	Patrick H. Owen
10/24/2014	REQU	CCSCOTDL	Request for Additional Record	Patrick H. Owen
11/5/2014	NOHG	CCSCOTDL	Notice Of Hearing re: Member Application for Expulsion of Michael L Hodge II and Removal of Michael L Hodge II as Manager (12-4-14 @ 1PM)	Patrick H. Owen
	HRSC	CCSCOTDL	Hearing Scheduled (Hearing Scheduled 12/04/2014 01:00 PM) Application for Exclusion	Patrick H. Owen
	STAT	CCSCOTDL	STATUS CHANGED: Closed pending clerk action	Patrick H. Owen

Donnelly Prehn, Dwight Bandak vs. The Source Store LLC, The Source LLC, Michael L Hodge II, George M Brown, Christopher Claiborne

Date	Code	User		Judge
11/5/2014	APPL	CCSCOTDL	Member Application for Expulsion of Michael L Hodge II as Member and removal of Michael L Hodge II as Manager	Patrick H. Owen
	MEMO	CCSCOTDL	Memorandum Supporting Member Application for Expulsion of Michael L Hodge Ii as Member and removal of Michael L Hodge II as Manager	Patrick H. Owen
11/24/2014	OBJT	CCGARCOS	Defendant's Objection to Member Application for Expulsion of Michael L. Hodge II as Member and Removal of Michael L. Hodge II as Manager	Patrick H. Owen
12/4/2014	DCHH	DCJOHNSI	Hearing result for Hearing Scheduled scheduled on 12/04/2014 01:00 PM: District Court Hearing Held Court Reporter: redlich Number of Transcript Pages for this hearing estimated: Application for Exclusion-50	Patrick H. Owen
1/14/2015	STAT	CCGARCOS	STATUS of Pending Settlement Negotiations	Patrick H. Owen
6/5/2015	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 42465	Patrick H. Owen

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728
Fee Category: A
Fee: $88.00

COMPLAINT

ORIGINAL

COME NOW the plaintiffs, Donnelly Prehn and Dwight Bandak, and for a cause of action against the defendants, The Source Store, LLC, Michael L. Hodge II, George M. Brown, Christopher Claiborne, and The Source, LLC, complain and allege as follows:

PARTIES

1. Plaintiff Donnelly Prehn ("Prehn") is an individual residing in Ada County, Idaho.

2. Plaintiff Dwight Bandak ("Bandak") is an individual residing in Ada County, Idaho.

3. Defendant The Source Store, LLC ("Source 1") is an Idaho limited liability company with its principal place of business in Ada County, Idaho.

4. Defendant Michael L. Hodge II ("Hodge") is an individual residing in Ada County, Idaho.

5. Defendant George M. Brown ("Brown") is an individual residing in Ada County, Idaho.

6. Defendant Christopher Claiborne ("Claiborne") is an individual residing in Los Angeles County, California.

7. Defendant The Source, LLC ("Source 2") is an Idaho limited liability company with its principal place of business in Ada County, Idaho.

8. Prehn, Bandak, Hodge, Brown and Claiborne are members of Source 1.

9. Hodge, Brown, and Claiborne's wife, Desiree Claiborne, are members of Source 2.

JURISDICTION AND VENUE

10. This is an action for preliminary and permanent injunctive relief pursuant to Rule 65 of the Idaho Rules of Civil Procedure; and an action for monetary damages in excess of the $10,000.00 jurisdictional requirement of this Court.

11. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code Section 1-705.

12. Pursuant to Idaho Code Section 5-514(a) and (b), this Court has personal jurisdiction over each of the defendants in this action, because the defendants have transacted business within the State of Idaho.

13. Venue of this action properly lies in Ada County, Idaho, pursuant to Idaho Code Section 5-404, because most of the defendants reside in and maintain their principal place of business in such county.

GENERAL ALLEGATIONS

Formation, Membership, and the Governing Agreements

14. The plaintiffs reallege paragraphs 1 through 13 above as though set forth in full.

15. Source 1 markets, develops, designs and produces merchandise and apparel for customers' promotional and marketing purposes. On June 21, 2002, Source 1 filed its Articles of Organization with the Idaho Secretary of State. Source 1 is a manager-managed limited liability company and at all times relevant to this action Hodge was, and remains, the sole manager of Source 1.

16. Prehn and Hodge were Source 1's founding members. On April 1, 2003, Prehn and Hodge executed the Operating Agreement of The Source Store, LLC (the "Operating

Agreement"), a complete and accurate, but unsigned, copy of which is attached hereto as Exhibit A.

17. On April 22, 2004, Claiborne and Bandak acquired membership shares in Source 1 and became members of Source 1 in accordance with the provisions of the Operating Agreement.

18. On December 31, 2006, Brown acquired membership shares in Source 1 and became a member of Source 1 in accordance with the provisions of the Operating Agreement.

19. Each member of Source 1 agreed to the terms and conditions of the Operating Agreement, and all amendments thereto.

20. Section 1.2 of the Operating Agreement provides that the business of Source 1 is to be conducted under such name or any other variation of such name, and specifically refers to operation of Source 1 under the name "The Source."

21. Section 2.2 of the Operating Agreement provides that no real, personal or other property of Source 1, including trade secrets and intellectual property, shall be deemed to be owned by any member individually. Such property and assets are owned and controlled exclusively by Source 1.

22. On or about May 12, 2003, and in compliance with Section 2.3 of the Operating Agreement, Hodge executed The Source Store, LLC Non-Compete Agreement (the "Non-Compete Agreement"), a copy of which is attached hereto as Exhibit B. The Non-Compete Agreement provides, in pertinent part, that while working for Source 1, Hodge shall not divert any Source 1 customers or employees on his own behalf, or on behalf of any other entity. Prehn executed a similar agreement.

23. Article 17 of the Operating Agreement governs the confidentiality of certain business records, information, knowledge, and trade secrets of Source 1. Specifically, Section 17.1 provides as follows:

> Each Member acknowledges that during the term of this Agreement, it may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, including, but not limited to, information concerning financial instruments, technical research data and literature, investment and trading models and techniques, records, and all other know-how, trade marks, trade secrets, business plans and methods, expansion plans, strategic plans, marketing plans, contracts, or other business documents which the Company treats as confidential and proprietary trade secrets (collectively "Confidential Information"). Each member expressly agrees that all such Confidential Information is and shall remain the property of the Company; and no Member shall use such Confidential Information in any manner detrimental to the best interests of the Company, including but not limited to activities that are competitive with the Company, nor shall any such Confidential Information be disclosed to any third party without the express written consent of the Members.

24. Section 9.5 of the Operating Agreement provides that members of Source 1 may advance funds to Source 1 as loans subject to repayment in the event Source 1 does not have sufficient cash to pay its obligations.

25. Article 14 of the Operating Agreement governs dissolution of Source 1. It provides that a liquidator should be appointed to liquidate all of Source 1's assets, and that until final distribution, the liquidator shall continue to operate Source 1. It also provides that, in the event of dissolution and liquidation, the payment of creditors, including member creditors, is the first priority. Finally, Article 14 provides that any member shall have the right to bid on any sales of assets of Source 1.

Development of The Source as a Viable Business

26. After organizing and founding Source 1 in 2002, Hodge and Prehn both worked full time at Source 1. Prehn worked full time at Source 1 through 2010, and Hodge worked full time at Source 1 until 2012.

27. Hodge and Prehn struggled to build the Source 1 brand and business and, between 2002 and 2005, Source 1 often did not have the ability to pay its obligations. In consideration of the tight budget and limited liquidity of Source 1, and upon the understanding that Prehn was unwilling to work full time at Source 1 without receiving compensation beyond his interest in Source 1, Prehn, Hodge and Source 1 agreed that Prehn would forego collection of a salary while the business grew. Prehn, Hodge and Source 1 agreed that Prehn would accrue back salary interest-free at a rate of 75% of the salary actually collected by Hodge from July 2002 through December 2004, and then accrue 100% of the salary actually collected byHodge during the calendar year of 2005 (the "Back Salary"). Hodge also agreed to personally guarantee payment of 35% of the Back Salary. Prehn, Hodge and Source 1 tracked the Back Salary, and Prehn did not collect any salary from Source 1 until January 2006. The Back Salary owed to Prehn is $68,750.00.

28. From 2002 to 2007, Prehn also made numerous advances to Source 1 (collectively, the "Prehn Loan") to ensure that Source 1 could meet its financial obligations and survive. Prehn, Hodge and Source 1 agreed that Source 1 would pay back the Prehn Loan, and that such payment would occur as funds became available. Prehn, Hodge and Source 1 agreed that the Prehn Loan would accrue interest at an annual rate of 14% through December 2008, and thereafter at an annual rate of 10%, and Hodge agreed to personally guarantee repayment of 35% the Prehn Loan.

29. Source 1 repaid portions of the outstanding balance on the Prehn Loan as it was able, and likewise took additional advances from Prehn under the terms of the Prehn Loan if it was necessary. The current balance of the Prehn Loan is $85,545.00.

30. Prehn documented and tracked the advances and repayments under the Prehn Loan and Back Salary in a spreadsheet. Prehn and Hodge periodically reviewed this spreadsheet together to confirm its accuracy.

31. In December 2010, upon Prehn's departure as an employee of Source 1, Source 1 agreed to pay Prehn the bonus to which he would have been entitled on net profits for the first quarter of 2011 (the "Prehn Bonus"). The Prehn Bonus was to be $14,160.00. Source 1 never paid the Prehn Bonus.

32. In addition, Source 1 loaned Hodge, at a minimum, $27,500.00, which Hodge agreed to repay to Source 1. The outstanding balance of that loan is $18,072.00. Hodge has refused to honor his repayment obligation to Source 1.

33. Over the course of the nearly 10 years since Hodge and Prehn founded Source 1 in 2002, Source 1 has developed an excellent reputation in the promotional product, tradeshow, and marketing industries. "The Source, Where Brand Creates Demand" is associated with quality service and excellent promotional and marketing products on a local, regional, and national scale. As a result of Source 1's successes, "The Source" name is well-recognized in the promotional products and apparel industry.

34. While Source 1's customer base is reasonably broad, among Source 1's most important customers is BodyBuilding.com, another successful Idaho company. BodyBuilding.com comprises 60% to 80% of Source 1's annual revenue.

Dissolution of The Source

35. During 2011, and in the first quarter of 2012, numerous disputes arose between Hodge and Prehn over financial projections and management salaries, increases in Source 1 overhead, various perks provided to members, and Source 1's liquidity and lines of credit.

36. As a result of such disputes, on or about April 1, 2012 the members voted to dissolve Source 1. The winding up of Source 1 activities is currently ongoing.

37. As of April 1, 2012, Source 1 had open customer purchase orders that evidence such customers' agreements to purchase products from Source 1, but which have not yet been processed, filled, or billed to such customers (the "Existing Purchase Orders").

38. Since April 1, 2012, Hodge, Brown, and Source 1 management and staff continue to receive purchase orders from customers of Source 1 (the "New Purchase Orders").

39. The Existing Purchase Orders and New Purchase Orders are assets of Source 1. They come from existing customers of Source 1, including BodyBuilding.com, which represents between 60% and 80% of Source 1's purchase orders on an annual basis. Combined, the Existing Purchase Orders and New Purchase Orders represent gross revenue to Source 1 of between $900,000.00 and $1.5 million.

40. On April 6, 2012, in addition to attempting to address his concerns about the Prehn Loan and the Back Salary, Prehn made a written request of Hodge for a current balance sheet for Source 1, as well as access to all books and records of Source 1 in connection with the dissolution. Hodge has refused to provide such information or access to such Source 1 records..

41. On April 9, 2012, Hodge stated that Source 1 would refuse to honor its obligations under the Prehn Loan. Hodge also stated that Source 1 would refuse to pay Prehn the Back Salary.

42. On April 9, 2012, Hodge also provided a calculation detail regarding each member's quarterly distribution. The detail includes a mathematical error that decreased Prehn's distribution share and increased Hodge's distribution share, which error has not been corrected.

43. The April 9, 2012 quarterly distribution detail also reduced the Prehn distribution by $6,100.00 and the Bandak distribution by $5,499.00 for amounts paid by Source 1 for health insurance and mobile phone service, ignoring an agreement among all the Source 1 members in January 2011 that Source 1 would provide each member with health insurance and mobile phone service at no cost to the member.

44. On April 15, 2012, Hodge indicated in an e-mail that he did not intend to process the Existing Purchase Orders or New Purchase Orders, which are extremely valuable assets of Source 1.

45. In such April 15, 2012 e-mail to members, Hodge also stated his belief that the vote to dissolve Source 1 absolved him of any responsibility as an employee of Source 1 and that he was no longer bound by the Non-Compete Agreement.

46. On April 16, 2012, Hodge, Brown, and Claiborne, who represent 51% of the voting interest in Source 1, voted to appoint Hodge as the liquidator pursuant to Section 14.2 of the Operating Agreement. Prehn and Bandak both abstained and expressed concerns about Hodge's potential conflicts of interest and the potential for self-dealing during liquidation of Source 1's assets, in light of Hodge's stated intent to start a business identical to Source 1.

47. Hodge, in his capacity as liquidator and sole manager of Source 1, refuses to process the Existing Purchase Orders and New Purchase Orders in order to realize the profits from such orders for Source 1's creditors and members. Such profits are estimated to be between $330,000.00 and $530,000.00.

48. Hodge, in his capacity as liquidator and sole manager of Source 1, refuses to fairly value and/or offer for sale the business opportunities, trade secrets, trade name, trade dress, business methods, proprietary information, customer lists, and other intellectual property of Source 1, for purposes of liquidation and in order to satisfy Source 1 creditors and maximize distributions to Source 1 members, and in accordance with the Operating Agreement.

49. Hodge and Prehn have both expressed their intention to compete in the promotional products industry. Accordingly, there exists a market for liquidation of Source 1's valuable trade secrets and intellectual property, in addition to any real or personal property of Source 1.

Self-Dealing and Misappropriation of The Source Assets

50. On April 16, 2012, the same day Hodge was appointed as the liquidator for purposes of winding up Source 1, Source 2 filed a Certificate of Organization with the Idaho Secretary of State. The Certificate of Organization, a copy of which is attached hereto as Exhibit C, lists Hodge, Brown, and Desiree Claiborne (Claiborne's wife) as members of the newly formed limited liability company.

51. Like Source 1, Source 2 does business as "The Source." Source 2 provides the same promotional services and products as Source 1, and utilizes the same trade secrets, trade name, trade dress, business methods, website, customer lists and customer contacts

that belong to Source 1. Source 2 also currently uses Source 1 equipment and staff to receive and process purchase orders for and conduct business as or on behalf of Source 2.

52. Hodge, Brown, Claiborne, and Source 2 intend to, or already have, effected the re-issuance of the Existing Purchase Orders in the name of Source 2. Hodge, Brown, Claiborne, and Source 2 intend to fill the Existing Purchase Orders and bill for such products and services on behalf of Source 2, although such assets lawfully belong to Source 1.

53. Hodge, Brown, Claiborne and Source 2 have diverted the New Purchase Orders to Source 2. Hodge, Brown, Claiborne, and Source 2 intend to fill the New Purchase Orders and bill for such products and services on behalf of Source 2, although such assets lawfully belong to Source 1.

54. Hodge, Brown, Claiborne, and Source 2 intend to continue to utilize property and assets of Source 1, including, but not limited to, the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists and customer contacts, to benefit Source 2, and without realizing the value of such property and assets for creditors and members of Source 1.

55. Hodge, while acting as liquidator and manager of Source 1, also acts as a manager of Source 2.

FIRST CLAIM FOR RELIEF

Breach of Agreements for Prehn Loan, Back Salary, and Prehn Bonus

56. The plaintiffs reallege paragraphs 1 through 55 above as though set forth in full.

57. The agreements between Source 1 and Prehn regarding the Prehn Loan, the Back Salary, and the Prehn Bonus are valid and enforceable agreements governed by and enforceable under Idaho law.

58. Source 1 is obligated to repay the Prehn Loan, the Back Salary, and the Prehn Bonus, and the Prehn Loan and Back Salary are entitled to a first priority position during dissolution and winding up of Source 1 as a creditor of Source 1.

59. Source 1's failure to pay the Prehn Bonus and repay the Prehn Loan and the Back Salary constitute a breach of the Source 1's agreements with Prehn.

60. As a direct and proximate result of such breaches, Prehn has suffered and will suffer monetary damages in the amount of $163,455.00.

SECOND CLAIM FOR RELIEF

Breach of Operating Agreement

61. The plaintiffs reallege paragraphs 1 through 60 above as though set forth in full.

62. Hodge has breached the Operating Agreement in a variety of ways, including without limitation:

(a) Hodge has made distributions to members without repayment in full of the Prehn Loan.

(b) Hodge has made erroneous distributions, both by virtue of accounting errors and in contravention of member agreements.

(c) Hodge has failed to continue to operate Source 1 honestly and faithfully and for the benefit of the members until final distribution.

(d) Hodge has failed to sell or otherwise properly liquidate all Source I assets as the liquidator.

(e) Hodge has failed to act with the care toward Source 1 that a person in his position should reasonably exercise under similar circumstances. Instead, he has take action to undermine and harm Source 1, by competing with Source 1 using Source 1 equipment and staff, as well as the trade name, trademarks, trade dress, customer lists, and proprietary and confidential information belonging to Source 1 for the sole and exclusive benefit of himself and Source 2.

63. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

64. Unless restrained and enjoined by this Court, Hodge will continue to directly and proximately cause Source 1, Prehn and Bandak great and irreparable damage and harm for which there is no adequate remedy at law.

65. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

THIRD CLAIM FOR RELIEF

Breach of Non-Compete Agreement

66. The plaintiffs reallege paragraphs 1 through 65 above as though set forth in full.

67. The Non-Compete Agreement between Source 1 and Hodge is currently a valid and enforceable agreement that is governed by and enforceable under Idaho law.

68. Hodge is contractually prohibited from competing with Source 1 during his continued employment by and management of Source 1.

69. Hodge breached the Non-Compete Agreement and his other contractual duties to Source 1 by actively pursuing activities in direct competition with Source 1 while employed and acting as manager and liquidator of Source 1, including without limitation the formation of Source 2, acting as manager of Source 2, active diversion of Source 1 customers and assets to Source 2, and the use of the trade name, trademarks, trade secrets, and other proprietary and confidential information of Source 1 for the sole and exclusive benefit of Hodge and/or Source 2.

70. Hodge has further breached the Non-Compete Agreement and his other contractual duties to Source 1 by soliciting, recruiting, or hiring employees of Source 1 on behalf of Source 2 while employed and acting as manager of Source 1.

71. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

72. Unless restrained or enjoined by this Court, Hodge, by his continued breach of the Non-Compete Agreement, continues to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

73. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested

and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

74. The plaintiffs reallege paragraphs 1 through 73 above as though set forth in full.

75. Hodge owes fiduciary duties of fidelity, loyalty and obedience to Source 1.

76. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to account to Source 1 and to hold as trustee for it any profit or benefit derived in the conduct of winding up Source 1's activities, from the use by Hodge of Source 1's property, and from the appropriation of opportunities belonging to Source 1.

77. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to refrain from dealing with Source 1 as, or on behalf of, a person having an interest adverse to Source 1.

78. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to refrain from competing with Source 1 in the conduct of Source 1's activities.

79. Hodge breached his fiduciary duties to Source 1, Prehn and Bandak in the manner set forth in the facts stated above.

80. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

81. Unless restrained or enjoined by this Court, Hodge, by his continued breach of fiduciary duties, continues to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

82. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FIFTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

83. The plaintiffs reallege paragraphs 1 through 82 above as though set forth in full.

84. Idaho law requires that all of the managers of a manager-managed limited liability company discharge the duties and exercise their rights consistently with the contractual obligation of good faith and fair dealing.

85. There is implied by law in every contract, including the Operating Agreement, a covenant of good faith and fair dealing, which obligated Hodge, Brown, and Claiborne to, among other things, deal with the plaintiffs fairly, honestly and equitably regarding all matters pertaining to their relationship with Source 1.

86. In addition, the implied covenant of good faith and fair dealing prohibited Hodge, Brown, and Claiborne from violating, nullifying or significantly impairing any of the benefits of the relationship owed to Source 1 and the plaintiffs.

87. Hodge, Brown, and Claiborne have violated their obligation of good faith and fair dealing in the manner described above.

88. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

89. Unless restrained or enjoined by this Court, Hodge, Brown and Claiborne, by their continued breach of the covenant of good faith and fair dealing, continue to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

Breach of the Loan Agreement between Source 1 and Hodge

90. The plaintiffs reallege paragraphs 1 through 89 above as though set forth in full.

91. The loan agreement between Hodge and Source 1 is a valid and enforceable agreement governed by and enforceable under Idaho law.

92. Hodge is obligated to repay Source 1 for the loan.

93. Hodge's failure to repay the loan received from Source 1 constitutes a breach of Hodge's loan agreement with Source 1.

94. As a direct and proximate result of such breach, Source 1 has suffered and will suffer monetary damages in the amount of $18,072.00.

95. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested

and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

SEVENTH CLAIM FOR RELIEF

Violation of Idaho Trade Secrets Act

96. The plaintiffs reallege paragraphs 1 through 95 above as though set forth in full.

97. The confidential information belonging to Source 1, including but not limited to its ideas, business plans, opportunities, designs, purchasing practices, and customer lists is information that constitutes trade secrets within the meaning of the Idaho Trade Secrets Act, Idaho Code Sections 48-801 *et seq.*, because such information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and because Source 1 made reasonable efforts to maintain the secrecy of such information.

98. The trade secrets of Source 1 are protected from actual or threatened misappropriation by the Idaho Trade Secrets Act, and such actual or threatened misappropriation may be enjoined by Order of this Court pursuant to Idaho Code Section 48-802(1).

99. Hodge, Brown, Claiborne and Source 2 have threatened to use or disclose and/or have used or disclosed Source 1's trade secrets without Source 1's consent to advance the interests of Source 2, when Hodge, Brown and Claiborne knew or had reason to know that they had a duty to maintain the secrecy and/or limit their use of such trade secrets.

100. By threatening to use or by using the trade secrets of Source 1, without permission from Source 1, and by competing with Source 1 during its winding up, which

competition will, if it has not already, inevitably lead to disclosure of the trade secrets of Source 1, Hodge, Brown, Claiborne and Source 2 have wrongfully threatened to misappropriate or misappropriated the trade secrets of Source 1 in violation of the Idaho Trade Secrets Act.

101. As a direct and proximate result of the threatened or actual misappropriation of Source 1's trade secrets by Hodge, Brown, Claiborne and Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

102. Unless restrained and enjoined by this Court, Hodge, Brown, Claiborne and Source 2 will, by threatening to misappropriate or misappropriating Source 1's trade secrets in violation of the Idaho Trade Secrets Act, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

103. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

EIGHTH CLAIM FOR RELIEF

Violation of the Lanham Act

104. The plaintiffs reallege paragraphs 1 through 103 above as though set forth in full.

105. The unauthorized use by Source 2 of Source 1's trade name and trademarks, including without limitation the use by Source 2 of the words "The Source" to identify Source 2 as a provider of promotional products to existing Source 1 customers and in the

promotional products industry in general, constitutes false designations of origin and false descriptions and representations. Source 2's uses create a likelihood of confusion and will cause mistake and deception in consumers' minds as to the affiliation, connection, or association of Source 2 and its goods with Source 1. Source 2's uses mislead as to origin, sponsorship or approval of Source 2's goods and services as by or authorized by Source 1. These acts violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

106. Source 2's use of certain custom fonts, logos and symbols of Source 1 constitute false designations of origin and false descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

107. The foregoing acts of Source 2 were committed willfully, and Source 2 intended to cause confusion or to deceive customers and to trade on the goodwill and reputation of Source 1.

108. As a direct and proximate result of the unauthorized use of Source 1's trade name and trademarks by Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

109. Unless restrained and enjoined by this Court, Source 2 will, by the unauthorized use of Source 1's trade name and trademarks, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

110. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

NINTH CLAIM FOR RELIEF

Common Law Trade Name and Trademark Infringement

111. The plaintiffs reallege paragraphs 1 through 110 above as though set forth in full.

112. The unauthorized use by Source 2 of Source 1's trade name and trademarks, including without limitation the use by Source 2 of the words "The Source" to identify Source 2 as a provider of promotional products to existing Source 1 customers and in the promotional products industry in general, constitute common law trade name and trademark infringement.

113. As a direct and proximate result of the unauthorized use of Source 1's trade name and trademarks by Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

114. Unless restrained and enjoined by this Court, Source 2 will, by the unauthorized use of Source 1's trade name and trademarks, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

115. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

TENTH CLAIM FOR RELIEF

Unjust Enrichment

116. The plaintiffs reallege paragraphs 1 through 115 above as though set forth in full.

117. Source 2, by unfair and inequitable means, has obtained, is obtaining and will, unless enjoined, continue to obtain substantial benefits and competitive advantages of substantial economic value in the form of the Source 1 labor and equipment while Hodge acts to wind down Source 1 and contemporaneously diverts Source 1 revenue and profits to Source 2, as well as the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists, Existing Purchase Orders and New Purchase Orders that belong to Source 1.

118. Given the inequitable and unfair manner in which Source 2 has obtained, is obtaining and will obtain such benefits and advantages to the detriment of Source 1, Prehn and Bandak, Source 2 has been, is being and will, unless enjoined, continue to be unjustly enriched.

119. It would be inequitable to allow Source 2 to retain such advantages and benefits, or to continue to obtain such advantages and benefits in the future.

120. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

ELEVENTH CLAIM FOR RELIEF

Tortious Interference with Contract

121. The plaintiffs reallege paragraphs 1 through 120 above as though set forth in full.

122. Hodge, Brown, and Source 2 knew that Source 1 had contracts for the provision of Source 1 products to customers in 2012 in the form of the Existing Purchase Orders. Hodge, Brown, and Source 2 also knew that Source 1 had a beneficial business relationship with BodyBuilding.com and other Source 1 customers.

123. Without authority or privilege, Hodge, Brown, and Source 2 knowingly and willfully induced customers with Existing Purchase Orders, including BodyBuilding.com, to rescind the Existing Purchase Orders to Source 1 and issue new purchase orders to Source 2.

124. Without authority or privilege, Hodge, Brown, and Source 2 knowingly and willfully induced, and continue to induce, customers who, in the ordinary course of business, place orders with Source 1, including BodyBuilding.com, to place such orders with Source 2.

125. As a direct and proximate result of Hodge, Brown and Source 2's interference with Source 1's contractual and business relationships, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

126. Unless restrained and enjoined by this Court, Source 2 will, by continued interference with Source 1's business and contractual relationships, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

127. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

TWELFTH CLAIM FOR RELIEF

Constructive Trust

128. The plaintiffs reallege paragraphs 1 through 127 above as though set forth in full.

129. By reason of the facts set forth above, Source 2, Hodge, Brown and Claiborne have been unjustly enriched by the receipt and use of the property and assets of Source 1, including the Existing Purchase Orders and New Purchase Orders, in that there is no evidence of any valuable consideration paid for such property and assets. Said enrichment has been to Source 2, Prehn and Bandak's detriment.

130. Accordingly, in equity, a constructive trust should be impressed upon the property and assets rightfully belonging to Source 1.

THIRTEENTH CLAIM FOR RELIEF

Injunctive Relief

131. The plaintiffs reallege paragraphs 1 through 130 above as though set forth in full.

132. Idaho law provides for injunctive relief when a party is threatened with irreparable damage and harm for which there is no adequate remedy at law.

133. Article 17 of the Operating Agreement provides for injunctive relief when any member violates the covenants and restrictions related to the disclosure or use of confidential information.

134. Hodge, Brown, Claiborne and Source 2's wrongful conduct, described with particularity in the foregoing paragraphs, is continuing and threatens to dilute or render valueless for purposes of sale the valuable assets of Source 1.

135. Further, the wrongful conduct of Hodge, Brown, Claiborne and Source 2 deprives Prehn and Bandak from fairly bidding on the valuable assets of Source 1, including without limitation the business opportunities, trade name, trademarks, trade dress, business

methods, trade secrets, customer lists and other proprietary and confidential information and intellectual property, in accordance with the Article 14 of the Operating Agreement.

136. Unless restrained and enjoined by this Court, Hodge, Brown, Claiborne and Source 2 will, by their continued wrongful conduct, directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

137. Further, the Idaho Limited Liability Company Act provides that this Court may order judicial supervision of the winding up of Source 1, including the appointment of a person to wind up Source 1's activities, for good cause.

138. The wrongful conduct of Hodge, Brown and Claiborne constitutes good cause for judicial oversight and appointment of an objective and impartial person to wind up Source 1's activities because, with the aid of Hodge as liquidator and sole manager of Source 1, Source 2 continues to divert Source 1's assets and goodwill during the period of winding up. Specifically, and without limitation, the following conduct constitutes good cause for judicial oversight and appointment of a new liquidator:

(a) The formation of Source 2 by Hodge, Brown and Claiborne to directly compete with Source 1 during the course of wind up activities;

(b) The appointment by Hodge, Brown and Claiborne of Hodge as liquidator on the same date as the formation of Source 2 to ensure the self-dealing and diversion of Source 1 opportunities, trade names, trademarks, trade dress, and other confidential and proprietary information and intellectual property to Source 2 without a full and fair opportunity for members to realize on the value of such assets;

(c) Hodge's management of Source 1 employees and equipment for the sole and exclusive benefit of Source 2;

(d) The failure to operate Source 1 for a reasonable time to process Existing Purchase Orders and New Purchase Orders received from Source 1 customers for the benefit of Source 1 creditors and members; and

(e) The failure to fairly assess or value for purposes of the sale of all assets of Source 1 to ensure the satisfaction of creditors and to maximize distribution to Source 1 members.

139. Unless this Court intervenes and appoints a new liquidator, Hodge, Brown and Claiborne will effectively loot Source 1 for the sole and exclusive benefit of Source 2, including the diversion of assets for which money damages may prove difficult or impossible to ascertain.

140. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

ATTORNEY FEES

141. The defendants' actions have required the plaintiffs to retain counsel to represent their interests. The plaintiffs are entitled to the recovery of their costs and attorney fees pursuant to the terms of the Operating Agreement and/or Idaho Code Sections 12-120(3) and/or 12-121.

PUNITIVE DAMAGES

142. The actions of the defendants alleged herein were taken maliciously, intentionally and willfully, with gross negligence and reckless disregard for, and in extreme deviation of, all appropriate and reasonable standards of care pertaining to the facts of this case. Pursuant to Idaho Code Section 6-1604, the plaintiffs hereby reserve the right to amend further this Complaint, with leave of the Court, adding a prayer for relief seeking exemplary and punitive damages against defendants.

WHEREFORE, the plaintiffs pray for relief as follows:

1. With respect to the First Claim for Relief, a judgment against Source 1 in favor of Prehn in the amount of $154,295.00;

2. With respect to the Second Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

3. With respect to the Third Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

4. With respect to the Fourth Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

5. With respect to the Fifth Claim for Relief, a judgment against Hodge, Brown and Claiborne in favor of Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

6. With respect to the Sixth Claim for Relief, a judgment against Hodge in favor of Source 1 for damages in the amount of $18,072.00;

7. With respect to the Seventh Claim for Relief, a judgment against Source 2, Hodge, Brown and Claiborne in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

8. With respect to the Eighth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

9. With respect to the Ninth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

10. With respect to the Tenth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

11. With respect to the Eleventh Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

12. With respect to the Twelfth Claim for Relief, creation of a constructive trust for Source 1, Prehn and Bandak's benefit as to the assets and property of Source 1.

13. With respect to the Thirteenth Claim for Relief, injunctive relief against Hodge, Brown, Claiborne, and Source 2, requiring (a) Hodge to comply with the Non-Compete Agreement; (b) Hodge, Brown and Claiborne to comply with Article 17 of the Operating Agreement regarding confidential information; (c) Source 2, Hodge, and Brown to cease and

desist processing Source 1 customer orders for the benefit of Source 2 or any other entity; (d) Source 2, Hodge and Brown to cease and desist using the trade name, trademarks, and trade dress of Source 1 to carry on the business of Source 2 or any other entity; (e) the appointment of an impartial liquidator to inventory, assess, value and sell or otherwise liquidate all Source 1 assets, including intangible assets in accordance with the Operating Agreement and Idaho law; and (f) Hodge to ensure that orders placed by Source 1 customers during wind up are received and processed in the ordinary course of business on the account of Source 1 until such time as the appointed liquidator sells or releases the valuable intangible assets of Source 1, including the Non-Compete Agreements and restrictive covenants regarding confidential information set forth in Article 17 of the Operating Agreement, after a full and fair opportunity for members to bid on such assets;

14. For plaintiffs' costs and attorney fees; and

15. For such other and further relief as the Court may deem just and proper.

DATED this 27 day of April, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

FIRST AMENDED COMPLAINT

ORIGINAL

SV

COME NOW the plaintiffs, Donnelly Prehn and Dwight Bandak, and for a cause of action against the defendants, The Source Store, LLC, Michael L. Hodge II, George M. Brown, Christopher Claiborne, and The Source, LLC, complain and allege as follows:

PARTIES

1. Plaintiff Donnelly Prehn ("Prehn") is an individual residing in Ada County, Idaho.

2. Plaintiff Dwight Bandak ("Bandak") is an individual residing in Ada County, Idaho.

3. Defendant The Source Store, LLC ("Source 1") is an Idaho limited liability company with its principal place of business in Ada County, Idaho.

4. Defendant Michael L. Hodge II ("Hodge") is an individual residing in Ada County, Idaho.

5. Defendant George M. Brown ("Brown") is an individual residing in Ada County, Idaho.

6. Defendant Christopher Claiborne ("Claiborne") is an individual residing in Los Angeles County, California.

7. Defendant The Source, LLC ("Source 2") is an Idaho limited liability company with its principal place of business in Ada County, Idaho.

8. Prehn, Bandak, Hodge, Brown and Claiborne are members of Source 1.

9. Hodge, Brown, and Claiborne's wife, Desiree Claiborne, are members of Source 2.

JURISDICTION AND VENUE

10. This is an action for preliminary and permanent injunctive relief pursuant to Rule 65 of the Idaho Rules of Civil Procedure; and an action for monetary damages in excess of the $10,000.00 jurisdictional requirement of this Court.

11. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code Section 1-705.

12. Pursuant to Idaho Code Section 5-514(a) and (b), this Court has personal jurisdiction over each of the defendants in this action, because the defendants have transacted business within the State of Idaho.

13. Venue of this action properly lies in Ada County, Idaho, pursuant to Idaho Code Section 5-404, because most of the defendants reside in and maintain their principal place of business in such county.

GENERAL ALLEGATIONS

Formation, Membership, and the Governing Agreements

14. The plaintiffs reallege paragraphs 1 through 13 above as though set forth in full.

15. Source 1 markets, develops, designs and produces merchandise and apparel for customers' promotional and marketing purposes. On June 21, 2002, Source 1 filed its Articles of Organization with the Idaho Secretary of State. Source 1 is a manager-managed limited liability company and at all times relevant to this action Hodge was, and remains, the sole manager of Source 1.

16. Prehn and Hodge were Source 1's founding members. On April 1, 2003, Prehn and Hodge executed the Operating Agreement of The Source Store, LLC (the "Operating

Agreement"), a complete and accurate, but unsigned, copy of which is attached hereto as Exhibit A.

17. On April 22, 2004, Claiborne and Bandak acquired membership shares in Source 1 and became members of Source 1 in accordance with the provisions of the Operating Agreement.

18. On December 31, 2006, Brown acquired membership shares in Source 1 and became a member of Source 1 in accordance with the provisions of the Operating Agreement.

19. Each member of Source 1 agreed to the terms and conditions of the Operating Agreement, and all amendments thereto.

20. Section 1.2 of the Operating Agreement provides that the business of Source 1 is to be conducted under such name or any other variation of such name, and specifically refers to operation of Source 1 under the name "The Source."

21. Section 2.2 of the Operating Agreement provides that no real, personal or other property of Source 1, including trade secrets and intellectual property, shall be deemed to be owned by any member individually. Such property and assets are owned and controlled exclusively by Source 1.

22. On or about May 12, 2003, and in compliance with Section 2.3 of the Operating Agreement, Hodge executed The Source Store, LLC Non-Compete Agreement (the "Non-Compete Agreement"), a copy of which is attached hereto as Exhibit B. The Non-Compete Agreement provides, in pertinent part, that while working for Source 1, Hodge shall not divert any Source 1 customers or employees on his own behalf, or on behalf of any other entity. Prehn executed a similar agreement.

23. Article 17 of the Operating Agreement governs the confidentiality of certain business records, information, knowledge, and trade secrets of Source 1. Specifically, Section 17.1 provides as follows:

> Each Member acknowledges that during the term of this Agreement, it may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, including, but not limited to, information concerning financial instruments, technical research data and literature, investment and trading models and techniques, records, and all other know-how, trade marks, trade secrets, business plans and methods, expansion plans, strategic plans, marketing plans, contracts, or other business documents which the Company treats as confidential and proprietary trade secrets (collectively "Confidential Information"). Each member expressly agrees that all such Confidential Information is and shall remain the property of the Company; and no Member shall use such Confidential Information in any manner detrimental to the best interests of the Company, including but not limited to activities that are competitive with the Company, nor shall any such Confidential Information be disclosed to any third party without the express written consent of the Members.

24. Section 9.5 of the Operating Agreement provides that members of Source 1 may advance funds to Source 1 as loans subject to repayment in the event Source 1 does not have sufficient cash to pay its obligations.

25. Article 14 of the Operating Agreement governs dissolution of Source 1. It provides that a liquidator should be appointed to liquidate all of Source 1's assets, and that until final distribution, the liquidator shall continue to operate Source 1. It also provides that, in the event of dissolution and liquidation, the payment of creditors, including member creditors, is the first priority. Finally, Article 14 provides that any member shall have the right to bid on any sales of assets of Source 1.

Development of The Source as a Viable Business

26. After organizing and founding Source 1 in 2002, Hodge and Prehn both worked full time at Source 1. Prehn worked full time at Source 1 through 2010, and Hodge worked full time at Source 1 until 2012.

27. Hodge and Prehn struggled to build the Source 1 brand and business and, between 2002 and 2005, Source 1 often did not have the ability to pay its obligations. In consideration of the tight budget and limited liquidity of Source 1, and upon the understanding that Prehn was unwilling to work full time at Source 1 without receiving compensation beyond his interest in Source 1, Prehn, Hodge and Source 1 agreed that Prehn would forego collection of a salary while the business grew. Prehn, Hodge and Source 1 agreed that Prehn would accrue back salary interest-free at a rate of 75% of the salary actually collected by Hodge from July 2002 through December 2004, and then accrue 100% of the salary actually collected byHodge during the calendar year of 2005 (the "Back Salary"). Hodge also agreed to personally guarantee payment of 35% of the Back Salary. Prehn, Hodge and Source 1 tracked the Back Salary, and Prehn did not collect any salary from Source 1 until January 2006. The Back Salary owed to Prehn is $68,750.00.

28. From 2002 to 2007, Prehn also made numerous advances to Source 1 (collectively, the "Prehn Loan") to ensure that Source 1 could meet its financial obligations and survive. Prehn, Hodge and Source 1 agreed that Source 1 would pay back the Prehn Loan, and that such payment would occur as funds became available. Prehn, Hodge and Source 1 agreed that the Prehn Loan would accrue interest at an annual rate of 14% through December 2008, and thereafter at an annual rate of 10%, and Hodge agreed to personally guarantee repayment of 35% the Prehn Loan.

29. Source 1 repaid portions of the outstanding balance on the Prehn Loan as it was able, and likewise took additional advances from Prehn under the terms of the Prehn Loan if it was necessary. The current balance of the Prehn Loan is $85,545.00.

30. Prehn documented and tracked the advances and repayments under the Prehn Loan and Back Salary in a spreadsheet. Prehn and Hodge periodically reviewed this spreadsheet together to confirm its accuracy.

31. In December 2010, upon Prehn's departure as an employee of Source 1, Source 1 agreed to pay Prehn the bonus to which he would have been entitled on net profits for the first quarter of 2011 (the "Prehn Bonus"). The Prehn Bonus was to be $14,160.00. Source 1 never paid the Prehn Bonus.

32. In addition, Source 1 loaned Hodge, at a minimum, $27,500.00, which Hodge agreed to repay to Source 1. The outstanding balance of that loan is $18,072.00. Hodge has refused to honor his repayment obligation to Source 1.

33. Over the course of the nearly 10 years since Hodge and Prehn founded Source 1 in 2002, Source 1 has developed an excellent reputation in the promotional product, tradeshow, and marketing industries. "The Source, Where Brand Creates Demand" is associated with quality service and excellent promotional and marketing products on a local, regional, and national scale. As a result of Source 1's successes, "The Source" name is well-recognized in the promotional products and apparel industry.

34. While Source 1's customer base is reasonably broad, among Source 1's most important customers is BodyBuilding.com, another successful Idaho company. BodyBuilding.com comprises 60% to 80% of Source 1's annual revenue.

Dissolution of The Source

35. During 2011, and in the first quarter of 2012, numerous disputes arose between Hodge and Prehn over financial projections and management salaries, increases in Source 1 overhead, various perks provided to members, and Source 1's liquidity and lines of credit.

36. As a result of such disputes, on or about April 1, 2012 the members voted to dissolve Source 1. The winding up of Source 1 activities is currently ongoing.

37. As of April 1, 2012, Source 1 had open customer purchase orders that evidence such customers' agreements to purchase products from Source 1, but which have not yet been processed, filled, or billed to such customers (the "Existing Purchase Orders").

38. Since April 1, 2012, Hodge, Brown, and Source 1 management and staff continue to receive purchase orders from customers of Source 1 (the "New Purchase Orders").

39. The Existing Purchase Orders and New Purchase Orders are assets of Source 1. They come from existing customers of Source 1, including BodyBuilding.com, which represents between 60% and 80% of Source 1's purchase orders on an annual basis. Combined, the Existing Purchase Orders and New Purchase Orders represent gross revenue to Source 1 of between $900,000.00 and $1.5 million.

40. On April 6, 2012, in addition to attempting to address his concerns about the Prehn Loan and the Back Salary, Prehn made a written request of Hodge for a current balance sheet for Source 1, as well as access to all books and records of Source 1 in connection with the dissolution. Hodge has refused to provide such information or access to such Source 1 records..

41. On April 9, 2012, Hodge stated that Source 1 would refuse to honor its obligations under the Prehn Loan. Hodge also stated that Source 1 would refuse to pay Prehn the Back Salary.

42. On April 9, 2012, Hodge also provided a calculation detail regarding each member's quarterly distribution. The detail includes a mathematical error that decreased Prehn's distribution share and increased Hodge's distribution share, which error has not been corrected.

43. The April 9, 2012 quarterly distribution detail also reduced the Prehn distribution by $6,100.00 and the Bandak distribution by $5,499.00 for amounts paid by Source 1 for health insurance and mobile phone service, ignoring an agreement among all the Source 1 members in January 2011 that Source 1 would provide each member with health insurance and mobile phone service at no cost to the member.

44. On April 15, 2012, Hodge indicated in an e-mail that he did not intend to process the Existing Purchase Orders or New Purchase Orders, which are extremely valuable assets of Source 1.

45. In such April 15, 2012 e-mail to members, Hodge also stated his belief that the vote to dissolve Source 1 absolved him of any responsibility as an employee of Source 1 and that he was no longer bound by the Non-Compete Agreement.

46. On April 16, 2012, Hodge, Brown, and Claiborne, who represent 51% of the voting interest in Source 1, voted to appoint Hodge as the liquidator pursuant to Section 14.2 of the Operating Agreement. Prehn and Bandak both abstained and expressed concerns about Hodge's potential conflicts of interest and the potential for self-dealing during liquidation of Source 1's assets, in light of Hodge's stated intent to start a business identical to Source 1.

47. Hodge, in his capacity as liquidator and sole manager of Source 1, refuses to process the Existing Purchase Orders and New Purchase Orders in order to realize the profits from such orders for Source 1's creditors and members. Such profits are estimated to be between $330,000.00 and $530,000.00.

48. Hodge, in his capacity as liquidator and sole manager of Source 1, refuses to fairly value and/or offer for sale the business opportunities, trade secrets, trade name, trade dress, business methods, proprietary information, customer lists, and other intellectual property of Source 1, for purposes of liquidation and in order to satisfy Source 1 creditors and maximize distributions to Source 1 members, and in accordance with the Operating Agreement.

49. Hodge and Prehn have both expressed their intention to compete in the promotional products industry. Accordingly, there exists a market for liquidation of Source 1's valuable trade secrets and intellectual property, in addition to any real or personal property of Source 1.

Self-Dealing and Misappropriation of The Source Assets

50. On April 16, 2012, the same day Hodge was appointed as the liquidator for purposes of winding up Source 1, Source 2 filed a Certificate of Organization with the Idaho Secretary of State. The Certificate of Organization, a copy of which is attached hereto as Exhibit C, lists Hodge, Brown, and Desiree Claiborne (Claiborne's wife) as members of the newly formed limited liability company.

51. Like Source 1, Source 2 does business as "The Source." Source 2 provides the same promotional services and products as Source 1, and utilizes the same trade secrets, trade name, trade dress, business methods, website, customer lists and customer contacts

that belong to Source 1. Source 2 also currently uses Source 1 equipment and staff to receive and process purchase orders for and conduct business as or on behalf of Source 2.

52. Hodge, Brown, Claiborne, and Source 2 intend to, or already have, effected the re-issuance of the Existing Purchase Orders in the name of Source 2. Hodge, Brown, Claiborne, and Source 2 intend to fill the Existing Purchase Orders and bill for such products and services on behalf of Source 2, although such assets lawfully belong to Source 1.

53. Hodge, Brown, Claiborne and Source 2 have diverted the New Purchase Orders to Source 2. Hodge, Brown, Claiborne, and Source 2 intend to fill the New Purchase Orders and bill for such products and services on behalf of Source 2, although such assets lawfully belong to Source 1.

54. Hodge, Brown, Claiborne, and Source 2 intend to continue to utilize property and assets of Source 1, including, but not limited to, the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists and customer contacts, to benefit Source 2, and without realizing the value of such property and assets for creditors and members of Source 1.

55. Hodge, while acting as liquidator and manager of Source 1, also acts as a manager of Source 2.

FIRST CLAIM FOR RELIEF

Breach of Agreements for Prehn Loan, Back Salary, and Prehn Bonus

56. The plaintiffs reallege paragraphs 1 through 55 above as though set forth in full.

57. The agreements between Source 1 and Prehn regarding the Prehn Loan, the Back Salary, and the Prehn Bonus are valid and enforceable agreements governed by and enforceable under Idaho law.

58. Source 1 is obligated to repay the Prehn Loan, the Back Salary, and the Prehn Bonus, and the Prehn Loan and Back Salary are entitled to a first priority position during dissolution and winding up of Source 1 as a creditor of Source 1.

59. Source 1's failure to pay the Prehn Bonus and repay the Prehn Loan and the Back Salary constitute a breach of the Source 1's agreements with Prehn.

60. As a direct and proximate result of such breaches, Prehn has suffered and will suffer monetary damages in the amount of $163,455.00.

SECOND CLAIM FOR RELIEF

Breach of Operating Agreement

61. The plaintiffs reallege paragraphs 1 through 60 above as though set forth in full.

62. Hodge has breached the Operating Agreement in a variety of ways, including without limitation:

(a) Hodge has made distributions to members without repayment in full of the Prehn Loan.

(b) Hodge has made erroneous distributions, both by virtue of accounting errors and in contravention of member agreements.

(c) Hodge has failed to continue to operate Source 1 honestly and faithfully and for the benefit of the members until final distribution.

(d) Hodge has failed to sell or otherwise properly liquidate all Source I assets as the liquidator.

(e) Hodge has failed to act with the care toward Source 1 that a person in his position should reasonably exercise under similar circumstances. Instead, he has take action to undermine and harm Source 1, by competing with Source 1 using Source 1 equipment and staff, as well as the trade name, trademarks, trade dress, customer lists, and proprietary and confidential information belonging to Source 1 for the sole and exclusive benefit of himself and Source 2.

63. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

64. Unless restrained and enjoined by this Court, Hodge will continue to directly and proximately cause Source 1, Prehn and Bandak great and irreparable damage and harm for which there is no adequate remedy at law.

65. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

THIRD CLAIM FOR RELIEF

Breach of Non-Compete Agreement

66. The plaintiffs reallege paragraphs 1 through 65 above as though set forth in full.

67. The Non-Compete Agreement between Source 1 and Hodge is currently a valid and enforceable agreement that is governed by and enforceable under Idaho law.

68. Hodge is contractually prohibited from competing with Source 1 during his continued employment by and management of Source 1.

69. Hodge breached the Non-Compete Agreement and his other contractual duties to Source 1 by actively pursuing activities in direct competition with Source 1 while employed and acting as manager and liquidator of Source 1, including without limitation the formation of Source 2, acting as manager of Source 2, active diversion of Source 1 customers and assets to Source 2, and the use of the trade name, trademarks, trade secrets, and other proprietary and confidential information of Source 1 for the sole and exclusive benefit of Hodge and/or Source 2.

70. Hodge has further breached the Non-Compete Agreement and his other contractual duties to Source 1 by soliciting, recruiting, or hiring employees of Source 1 on behalf of Source 2 while employed and acting as manager of Source 1.

71. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

72. Unless restrained or enjoined by this Court, Hodge, by his continued breach of the Non-Compete Agreement, continues to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

73. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested

and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

74. The plaintiffs reallege paragraphs 1 through 73 above as though set forth in full.

75. Hodge owes fiduciary duties of fidelity, loyalty and obedience to Source 1.

76. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to account to Source 1 and to hold as trustee for it any profit or benefit derived in the conduct of winding up Source 1's activities, from the use by Hodge of Source 1's property, and from the appropriation of opportunities belonging to Source 1.

77. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to refrain from dealing with Source 1 as, or on behalf of, a person having an interest adverse to Source 1.

78. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to refrain from competing with Source 1 in the conduct of Source 1's activities.

79. Hodge breached his fiduciary duties to Source 1, Prehn and Bandak in the manner set forth in the facts stated above.

80. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

81. Unless restrained or enjoined by this Court, Hodge, by his continued breach of fiduciary duties, continues to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

82. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FIFTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

83. The plaintiffs reallege paragraphs 1 through 82 above as though set forth in full.

84. Idaho law requires that all of the managers of a manager-managed limited liability company discharge the duties and exercise their rights consistently with the contractual obligation of good faith and fair dealing.

85. There is implied by law in every contract, including the Operating Agreement, a covenant of good faith and fair dealing, which obligated Hodge, Brown, and Claiborne to, among other things, deal with the plaintiffs fairly, honestly and equitably regarding all matters pertaining to their relationship with Source 1.

86. In addition, the implied covenant of good faith and fair dealing prohibited Hodge, Brown, and Claiborne from violating, nullifying or significantly impairing any of the benefits of the relationship owed to Source 1 and the plaintiffs.

87. Hodge, Brown, and Claiborne have violated their obligation of good faith and fair dealing in the manner described above.

88. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

89. Unless restrained or enjoined by this Court, Hodge, Brown and Claiborne, by their continued breach of the covenant of good faith and fair dealing, continue to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

Breach of the Loan Agreement between Source 1 and Hodge

90. The plaintiffs reallege paragraphs 1 through 89 above as though set forth in full.

91. The loan agreement between Hodge and Source 1 is a valid and enforceable agreement governed by and enforceable under Idaho law.

92. Hodge is obligated to repay Source 1 for the loan.

93. Hodge's failure to repay the loan received from Source 1 constitutes a breach of Hodge's loan agreement with Source 1.

94. As a direct and proximate result of such breach, Source 1 has suffered and will suffer monetary damages in the amount of $18,072.00.

95. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested

and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

SEVENTH CLAIM FOR RELIEF

Violation of Idaho Trade Secrets Act

96. The plaintiffs reallege paragraphs 1 through 95 above as though set forth in full.

97. The confidential information belonging to Source 1, including but not limited to its ideas, business plans, opportunities, designs, purchasing practices, and customer lists is information that constitutes trade secrets within the meaning of the Idaho Trade Secrets Act, Idaho Code Sections 48-801 *et seq.*, because such information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and because Source 1 made reasonable efforts to maintain the secrecy of such information.

98. The trade secrets of Source 1 are protected from actual or threatened misappropriation by the Idaho Trade Secrets Act, and such actual or threatened misappropriation may be enjoined by Order of this Court pursuant to Idaho Code Section 48-802(1).

99. Hodge, Brown, Claiborne and Source 2 have threatened to use or disclose and/or have used or disclosed Source 1's trade secrets without Source 1's consent to advance the interests of Source 2, when Hodge, Brown and Claiborne knew or had reason to know that they had a duty to maintain the secrecy and/or limit their use of such trade secrets.

100. By threatening to use or by using the trade secrets of Source 1, without permission from Source 1, and by competing with Source 1 during its winding up, which

competition will, if it has not already, inevitably lead to disclosure of the trade secrets of Source 1, Hodge, Brown, Claiborne and Source 2 have wrongfully threatened to misappropriate or misappropriated the trade secrets of Source 1 in violation of the Idaho Trade Secrets Act.

101. As a direct and proximate result of the threatened or actual misappropriation of Source 1's trade secrets by Hodge, Brown, Claiborne and Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

102. Unless restrained and enjoined by this Court, Hodge, Brown, Claiborne and Source 2 will, by threatening to misappropriate or misappropriating Source 1's trade secrets in violation of the Idaho Trade Secrets Act, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

103. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

EIGHTH CLAIM FOR RELIEF

Violation of the Lanham Act

104. The plaintiffs reallege paragraphs 1 through 103 above as though set forth in full.

105. The unauthorized use by Source 2 of Source 1's trade name and trademarks, including without limitation the use by Source 2 of the words "The Source" to identify Source 2 as a provider of promotional products to existing Source 1 customers and in the

promotional products industry in general, constitutes false designations of origin and false descriptions and representations. Source 2's uses create a likelihood of confusion and will cause mistake and deception in consumers' minds as to the affiliation, connection, or association of Source 2 and its goods with Source 1. Source 2's uses mislead as to origin, sponsorship or approval of Source 2's goods and services as by or authorized by Source 1. These acts violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

106. Source 2's use of certain custom fonts, logos and symbols of Source 1 constitute false designations of origin and false descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

107. The foregoing acts of Source 2 were committed willfully, and Source 2 intended to cause confusion or to deceive customers and to trade on the goodwill and reputation of Source 1.

108. As a direct and proximate result of the unauthorized use of Source 1's trade name and trademarks by Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

109. Unless restrained and enjoined by this Court, Source 2 will, by the unauthorized use of Source 1's trade name and trademarks, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

110. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

NINTH CLAIM FOR RELIEF

Common Law Trade Name and Trademark Infringement

111. The plaintiffs reallege paragraphs 1 through 110 above as though set forth in full.

112. The unauthorized use by Source 2 of Source 1's trade name and trademarks, including without limitation the use by Source 2 of the words "The Source" to identify Source 2 as a provider of promotional products to existing Source 1 customers and in the promotional products industry in general, constitute common law trade name and trademark infringement.

113. As a direct and proximate result of the unauthorized use of Source 1's trade name and trademarks by Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

114. Unless restrained and enjoined by this Court, Source 2 will, by the unauthorized use of Source 1's trade name and trademarks, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

115. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

TENTH CLAIM FOR RELIEF

Unjust Enrichment

116. The plaintiffs reallege paragraphs 1 through 115 above as though set forth in full.

117. Source 2, by unfair and inequitable means, has obtained, is obtaining and will, unless enjoined, continue to obtain substantial benefits and competitive advantages of substantial economic value in the form of the Source 1 labor and equipment while Hodge acts to wind down Source 1 and contemporaneously diverts Source 1 revenue and profits to Source 2, as well as the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists, Existing Purchase Orders and New Purchase Orders that belong to Source 1.

118. Given the inequitable and unfair manner in which Source 2 has obtained, is obtaining and will obtain such benefits and advantages to the detriment of Source 1, Prehn and Bandak, Source 2 has been, is being and will, unless enjoined, continue to be unjustly enriched.

119. It would be inequitable to allow Source 2 to retain such advantages and benefits, or to continue to obtain such advantages and benefits in the future.

120. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

ELEVENTH CLAIM FOR RELIEF

Tortious Interference with Contract

121. The plaintiffs reallege paragraphs 1 through 120 above as though set forth in full.

122. Hodge, Brown, and Source 2 knew that Source 1 had contracts for the provision of Source 1 products to customers in 2012 in the form of the Existing Purchase Orders. Hodge, Brown, and Source 2 also knew that Source 1 had a beneficial business relationship with BodyBuilding.com and other Source 1 customers.

123. Without authority or privilege, Hodge, Brown, and Source 2 knowingly and willfully induced customers with Existing Purchase Orders, including BodyBuilding.com, to rescind the Existing Purchase Orders to Source 1 and issue new purchase orders to Source 2.

124. Without authority or privilege, Hodge, Brown, and Source 2 knowingly and willfully induced, and continue to induce, customers who, in the ordinary course of business, place orders with Source 1, including BodyBuilding.com, to place such orders with Source 2.

125. As a direct and proximate result of Hodge, Brown and Source 2's interference with Source 1's contractual and business relationships, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

126. Unless restrained and enjoined by this Court, Source 2 will, by continued interference with Source 1's business and contractual relationships, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

127. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

TWELFTH CLAIM FOR RELIEF

Constructive Trust

128. The plaintiffs reallege paragraphs 1 through 127 above as though set forth in full.

129. By reason of the facts set forth above, Source 2, Hodge, Brown and Claiborne have been unjustly enriched by the receipt and use of the property and assets of Source 1, including the Existing Purchase Orders and New Purchase Orders, in that there is no evidence of any valuable consideration paid for such property and assets. Said enrichment has been to Source 2, Prehn and Bandak's detriment.

130. Accordingly, in equity, a constructive trust should be impressed upon the property and assets rightfully belonging to Source 1.

THIRTEENTH CLAIM FOR RELIEF

Injunctive Relief

131. The plaintiffs reallege paragraphs 1 through 130 above as though set forth in full.

132. Idaho law provides for injunctive relief when a party is threatened with irreparable damage and harm for which there is no adequate remedy at law.

133. Article 17 of the Operating Agreement provides for injunctive relief when any member violates the covenants and restrictions related to the disclosure or use of confidential information.

134. Hodge, Brown, Claiborne and Source 2's wrongful conduct, described with particularity in the foregoing paragraphs, is continuing and threatens to dilute or render valueless for purposes of sale the valuable assets of Source 1.

135. Further, the wrongful conduct of Hodge, Brown, Claiborne and Source 2 deprives Prehn and Bandak from fairly bidding on the valuable assets of Source 1, including without limitation the business opportunities, trade name, trademarks, trade dress, business

methods, trade secrets, customer lists and other proprietary and confidential information and intellectual property, in accordance with the Article 14 of the Operating Agreement.

136. Unless restrained and enjoined by this Court, Hodge, Brown, Claiborne and Source 2 will, by their continued wrongful conduct, directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

137. Further, the Idaho Limited Liability Company Act provides that this Court may order judicial supervision of the winding up of Source 1, including the appointment of a person to wind up Source 1's activities, for good cause.

138. The wrongful conduct of Hodge, Brown and Claiborne constitutes good cause for judicial oversight and appointment of an objective and impartial person to wind up Source 1's activities because, with the aid of Hodge as liquidator and sole manager of Source 1, Source 2 continues to divert Source 1's assets and goodwill during the period of winding up. Specifically, and without limitation, the following conduct constitutes good cause for judicial oversight and appointment of a new liquidator:

(a) The formation of Source 2 by Hodge, Brown and Claiborne to directly compete with Source 1 during the course of wind up activities;

(b) The appointment by Hodge, Brown and Claiborne of Hodge as liquidator on the same date as the formation of Source 2 to ensure the self-dealing and diversion of Source 1 opportunities, trade names, trademarks, trade dress, and other confidential and proprietary information and intellectual property to Source 2 without a full and fair opportunity for members to realize on the value of such assets;

(c) Hodge's management of Source 1 employees and equipment for the sole and exclusive benefit of Source 2;

(d) The failure to operate Source 1 for a reasonable time to process Existing Purchase Orders and New Purchase Orders received from Source 1 customers for the benefit of Source 1 creditors and members; and

(e) The failure to fairly assess or value for purposes of the sale of all assets of Source 1 to ensure the satisfaction of creditors and to maximize distribution to Source 1 members.

139. Unless this Court intervenes and appoints a new liquidator, Hodge, Brown and Claiborne will effectively loot Source 1 for the sole and exclusive benefit of Source 2, including the diversion of assets for which money damages may prove difficult or impossible to ascertain.

140. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

ATTORNEY FEES

141. The defendants' actions have required the plaintiffs to retain counsel to represent their interests. The plaintiffs are entitled to the recovery of their costs and attorney fees pursuant to the terms of the Operating Agreement and/or Idaho Code Sections 12-120(3) and/or 12-121.

PUNITIVE DAMAGES

142. The actions of the defendants alleged herein were taken maliciously, intentionally and willfully, with gross negligence and reckless disregard for, and in extreme deviation of, all appropriate and reasonable standards of care pertaining to the facts of this case. Pursuant to Idaho Code Section 6-1604, the plaintiffs hereby reserve the right to amend further this Complaint, with leave of the Court, adding a prayer for relief seeking exemplary and punitive damages against defendants.

WHEREFORE, the plaintiffs pray for relief as follows:

1. With respect to the First Claim for Relief, a judgment against Source 1 in favor of Prehn in the amount of $154,295.00;

2. With respect to the Second Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

3. With respect to the Third Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

4. With respect to the Fourth Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

5. With respect to the Fifth Claim for Relief, a judgment against Hodge, Brown and Claiborne in favor of Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

6. With respect to the Sixth Claim for Relief, a judgment against Hodge in favor of Source 1 for damages in the amount of $18,072.00;

7. With respect to the Seventh Claim for Relief, a judgment against Source 2, Hodge, Brown and Claiborne in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

8. With respect to the Eighth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

9. With respect to the Ninth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

10. With respect to the Tenth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

11. With respect to the Eleventh Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

12. With respect to the Twelfth Claim for Relief, creation of a constructive trust for Source 1, Prehn and Bandak's benefit as to the assets and property of Source 1.

13. With respect to the Thirteenth Claim for Relief, injunctive relief against Hodge, Brown, Claiborne, and Source 2, requiring (a) Hodge to comply with the Non-Compete Agreement; (b) Hodge, Brown and Claiborne to comply with Article 17 of the Operating Agreement regarding confidential information; (c) Source 2, Hodge, and Brown to cease and

desist processing Source 1 customer orders for the benefit of Source 2 or any other entity; (d) Source 2, Hodge and Brown to cease and desist using the trade name, trademarks, and trade dress of Source 1 to carry on the business of Source 2 or any other entity; (e) the appointment of an impartial liquidator to inventory, assess, value and sell or otherwise liquidate all Source 1 assets, including intangible assets in accordance with the Operating Agreement and Idaho law; and (f) Hodge to ensure that orders placed by Source 1 customers during wind up are received and processed in the ordinary course of business on the account of Source 1 until such time as the appointed liquidator sells or releases the valuable intangible assets of Source 1, including the Non-Compete Agreements and restrictive covenants regarding confidential information set forth in Article 17 of the Operating Agreement, after a full and fair opportunity for members to bid on such assets;

14. For plaintiffs' costs and attorney fees; and

15. For such other and further relief as the Court may deem just and proper.

DATED this 27 day of April, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

EXHIBIT A

OPERATING AGREEMENT
OF
THE SOURCE STORE, LLC

This Operating Agreement of **THE SOURCE STORE, LLC**, an Idaho limited liability company, is made and entered into as of the 1st day of April, 2003, by and between Michael L. Hodge II ("Hodge") and Donnelly Prehn ("Prehn") (Hodge and Prehn are sometimes referred to in this Operating Agreement as the "Initial Members"), and such other Persons who may execute this Agreement from time to time as Members.

RECITALS:

A. The Members desire to form the Company as an Idaho limited liability company pursuant to the terms and conditions of this Agreement, and the Idaho Limited Liability Act, Idaho Code §§ 53-601 *et seq.*

B. The parties hereto desire to provide for the governance of the Company and to set forth in detail the Members' respective rights and duties to the Company.

C. The Members executing this Agreement, or a counterpart hereof, agree to the terms and conditions of this Agreement, as it may from time to time be amended according to its terms.

D. Capitalized terms used herein shall have the meanings given such terms in *Article 18* of this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - ORGANIZATION

1.1 Formation. The Company has been formed as a limited liability company pursuant to the Act by filing Articles of Organization described in Section 53-608 of the Act (the "Articles") with the Secretary of State of the State of Idaho (the "Secretary of State") in conformity with the Act. The Company and, if required, each of the Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things (including keeping books and records and making publications or periodic filings) as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Idaho.

1.2 Company Name. The name of the Company is **THE SOURCE STORE, LLC**, and all business of the Company shall be conducted under that name or under any other name or variations thereof as the Manager may determine, but in any case, only to the extent permitted by applicable law. The Members agree that the Company shall file *d/b/a* applications in appropriate states, including Idaho, to operate under the name "**The Source**."

1.3 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and that location reflected in the Articles as filed in the office of the Secretary of State. The Manager may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State. If the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a Notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

1.4 Principal Office. The Principal Office of the Company shall be located at such place as the Members may designate, which need not be in the State of Idaho, and the Company shall maintain its records there. The Company may have such other offices as the Members may designate from time to time.

1.5 Foreign Qualification. Each Member agrees to execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue or terminate the Company as a foreign limited liability company in all jurisdictions in which the nature of the business conducted by the Company or the ownership or leasing of property by the Company may require such qualification.

1.6 Term. The term of this Agreement (the "Term") shall end, if not sooner terminated in accordance with the provisions hereof, on December 31, 2040.

1.1 No State-Law Partnership. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Idaho Uniform Partnership Act or the Idaho Uniform Limited Partnership Act. The Members do not intend to be partners or joint venturers to each other, or as to any third party, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise. To the extent that the Manager or any Member, by word or action, represents to another Person that any other Member is a partner or joint venturer with such Member or Manager, or that the Company is a partnership or joint venture, the Manager or Member making such wrongful representation shall be liable to all other Member(s) and Manager(s) who incur personal liability by reason of such misrepresentation.

ARTICLE 2 - PURPOSE AND NATURE OF BUSINESS

2.1 Purpose; Power and Authority. The Company is being formed to: (a) sell, market and distribute corporate promotional products; and (b) engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have all powers provided for in the Act and the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this *Article 2* and elsewhere in this Agreement. The Company exists only for the purpose specified in this *Article 2*, and may not conduct any other business without the approval of 51% or more of the Member Interest in the Company. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Idaho.

2.2 Company Property. No real, personal or other Property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title shall be vested solely in the Company. Without limiting the foregoing, all trade secrets, intellectual property, and other business assets used or developed by the Company are owned and controlled exclusively by, and in the sole discretion of, the Company. The Membership Interests of the Members in the Company, as represented by the Membership Share Certificates, shall constitute their own personal property.

2.3 Non Compete Agreements. Concurrently with the execution and delivery of this Agreement, each of the Initial Members shall sign and deliver a Non-Compete Agreement, substantially in the form attached hereto as Exhibit A, pursuant to which each of the Initial Members shall agree not to solicit customers of the Company for a competing business for a period of two (2) years following his termination of employment with and/or ownership of the Company.

2.4 Time Devoted to Business. It is understood and agreed by the Initial Members that Hodge shall devote his full-time efforts to the business of the Company. It is further understood and agreed by the Initial Members that Prehn shall devote his time to the Company on a part-time basis, and that his duties shall be split between the Company and Boise Capital Group, with the majority of his time spent on Company business.

2.5 Facilities Provided to Prehn. During the term of his association with the Company, the Company will provide Prehn with an office at the Company's principal place of business and access to phone, fax and copier equipment; *provided, however*, that any incremental charges, excluding rent or time spent on Company business, will be reimbursed to the Company by Prehn. It is understood and agreed by the Initial Members that Prehn will conduct business activities at this location on behalf of both the Company and Boise Capital Group.

ARTICLE 3 - ACCOUNTING AND RECORDS; TAX MATTERS

3.1 Records to be Maintained. At the expense of the Company, the Manager shall maintain or cause to be maintained reasonable books, records and accounts of all operations and expenditures of the Company. At a minimum, the Manager shall keep or cause to be kept the following records at the Company's Principal Office in accordance with Section 53-625 of the Act:

(a) A current list, setting forth the full name and last known mailing address of each current and former Manager and each current and former Member and Assignee, in alphabetical order;

(b) A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which Articles of Amendment have been executed;

(c) Copies of the Company's federal, foreign, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for the period;

(d) Copies of this Agreement, including all amendments hereto, and copies of any written operating agreements no longer in effect;

(e) Minutes of every meeting of the Members and/or Manager(s) and any written consents obtained from Members and/or Manager(s) for actions taken without a meeting; and

(f) Any other books and records required to be maintained by the Act.

3.2 Access to Books and Records. All Members shall have the right at all reasonable times during usual business hours to examine, and make copies of or extracts from, the books of account of the Company and the records required to be maintained hereunder. Such right may be exercised through any Representative of such Member designated by it. Each Member shall bear all expenses incurred in any such examination made for such Member's account. Any information obtained and copied pursuant to operation of this *Section 3.2* shall be kept and maintained in strictest confidence in accordance with the provisions of *Article 17* hereof.

3.3 Financial and Tax Reporting Principles.

(a) Accounting Principles. The Company's books and records shall be kept, and its income tax returns and financial statements prepared, under such permissible method of accounting, consistently applied, as a Majority Vote of Membership Shares determines is in the best interest of the Company and its Members, except that the financial statements and records shall be kept consistent with GAAP.

(b) Taxable Year. The taxable year of the Company shall be its Fiscal Year.

3.4 Annual Reports to Current Members. To the extent reasonably practicable, the Manager shall prepare and mail to each current Member, or shall cause to be prepared and mailed to each current Member, within ninety (90) days of the end of each Fiscal Year, a financial report setting forth the following: (i) a balance sheet of the Company as of the close of such Fiscal Year; (ii) a statement showing the Net Profit or Net Loss of the Company for such Fiscal Year in reasonable detail; and (iii) a statement indicating changes in the aggregate Capital Account balances of the Members for such Fiscal Year. Each Member shall receive for approval a copy of the annual budget of the Company (the "Annual Budget"), consisting of an operating budget, a capital expenditure budget and a cash usage plan for the Company, for each Fiscal Year of the Company no later than fifteen (15) days prior to the commencement of such Fiscal Year. Each Annual Budget shall be approved by a Majority Vote of Membership Shares.

3.5 Tax Information for Current and Former Members and Assignees. To the extent reasonably practicable, within ninety (90) days after the end of each Fiscal Year, the Manager shall prepare and mail (or cause to be prepared and mailed) to each current Member and Assignee and, to the extent necessary, to each former Member and Assignee (or such Member's or Assignee's legal representatives), a report setting forth in sufficient detail such information as shall enable such Person to prepare its federal, state and local income tax returns in accordance with the laws, rules and regulations then prevailing. The Company shall also provide Form K-1s to Members and Assignees as soon as practicable after the end of each Fiscal Year.

3.6 Indemnification Reporting. In the event the Company indemnifies or advances expenses to a Member, Manager or Officer in connection with a Proceeding as provided in *Article 15* hereof, the Company shall promptly report the indemnification or advance in writing to the Members.

3.7 Filing of Tax Returns. The Tax Matters Partner (as defined in *Section 3.8* below) shall prepare and file, or cause to be prepared and filed, a federal information tax return and any required state and local income tax and information returns for each tax year of the Company. The Tax Matters Partner has sole and absolute discretion as to whether or not to prepare and file (or cause to be prepared and filed) composite, group or similar state, local and foreign tax returns on behalf of the Members and Assignees where and to the extent permissible under applicable law. Each Member and Assignee hereby agrees to execute any relevant documents (including a power of attorney authorizing such a filing), to furnish any relevant information and otherwise to do anything necessary in order to facilitate any such composite, group or similar filing. Any taxes paid by the Company in connection with any such composite, group or similar filing shall be treated as an advance to the relevant Members and Assignees (with interest being charged thereon) and shall be recouped by the Company out of any Distributions subsequently made to such relevant Members and Assignees. Such advances may be funded by Company borrowings. Both the deduction for interest payable by the Company with respect to any such borrowings, and the corresponding income from interest received by the Company from the relevant Members and Assignees, shall be specifically allocated to such Members and Assignees.

3.8 Tax Matters Partner. The tax matters partner of the Company (the "Tax Matters Partner") as provided in section 6231(a)(7) of the Code, is hereby designated as Michael L. Hodge II. A Majority Vote of Membership Shares may change the identity of the Tax Matters Partner from time to time by resolution. Each Person (for purposes of this provision a "Pass-Thru Partner") that holds or controls a Membership Interest on behalf of, or for the benefit of another Person or Persons, or which Pass-Thru Partner is beneficially owned (directly or indirectly) by another Person or Persons, shall, within thirty (30) days following receipt from the Tax Matters Partner of a Notice or document, convey such Notice or other document in writing to all holders of beneficial interests in the Company holding such Membership Interest through such Pass-Thru Partner. In the event the Company shall be the subject of an income tax audit by any federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member and Assignee. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Company.

3.9 Expenses of Tax Matters Partner; Indemnification. The Company shall indemnify and reimburse the Tax Matters Partner for all reasonable expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members attributable to the Company. The payment of all such expenses shall be made before any Distributions are made to Members (and such expenses shall be taken into consideration for purposes of determining Net Cash from Operations) or any discretionary Reserves are set aside. Neither the Tax Matters Partner nor any Member shall have any obligation to provide funds for such purpose. The provisions for exculpation and indemnification set forth in *Article 15* of this Agreement shall be fully applicable to the Tax Matters Partner for the Company.

3.10 Tax Elections.

(a) Elections. The Tax Matters Partner shall make the following elections on the appropriate tax returns:

(i) To adopt the Company's Fiscal Year in accordance with the Code and applicable Regulations;

(ii) To adopt an appropriate method of accounting and to keep the Company's books and records on that method; and

(iii) Any other election the Manager deems appropriate and in the best interests of the Company and the Members, including, without limitation, an election under section 754 of the Code.

(b) Intent of Parties. It is the intent of the parties to this Agreement that the Company be treated as a partnership for United States federal income tax purposes and, to the extent permitted by applicable law, for state and local franchise and income tax purposes. Neither the Company, the Manager, the Tax Matters Partner nor any Member may make any election for the Company to be excluded from the application of the provisions of Subchapter K of Subtitle A of the Code or any other provisions of applicable state or local law, and no provision of this Agreement shall be construed to sanction or approve such an election.

3.11 Withholding. With respect to any Member or Assignee who is not a United States Person within the meaning of the Code, any tax required to be withheld under section 1446 or other provisions of the Code, or under state law, shall, unless already reflected in an appropriate charge to the Capital Account of the Member or Assignee, be charged to such Member's or Assignee's Capital Account as if the amount of such tax had been distributed to such Member or Assignee. The amount so withheld shall be treated as a distribution of Net Cash from Operations to such Member or Assignee for all purposes of this Agreement.

ARTICLE 4 - MEMBERSHIP

4.1 Registry of Members. Attached as **Schedule 1** hereto is a registry of the names of the Members, together with their addresses, their Sharing Ratios in, and their Capital Contributions to, the Company, as well as the number of Membership Shares owned by each Member. The Manager shall cause to be made all appropriate entries on and shall periodically amend **Schedule 1** to reflect accurately the membership in the Company, and all relevant information concerning the ownership of Membership Shares during the term of this Agreement. Similar information with respect to Assignees shall be included on **Schedule 1** from time to time as appropriate.

4.2 Representations and Warranties of Members. By the due execution and delivery of this Agreement, or a counterpart signature page hereof, each Member represents and warrants to the Company, the Manager and to each other Member that:

(a) **Due Authority**. The Member has all necessary corporate, partnership, limited liability company, trust or other applicable power and authority to enter into this Agreement and to perform its obligations hereunder, and all necessary actions by its board of directors, shareholders, partners, members, managers, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery and performance of this Agreement by the Member have been duly taken.

(b) **Due Execution**. The Member has duly executed and delivered this Agreement or has caused its duly authorized officer or agent to execute and deliver this Agreement.

(c) **Non-Contravention**. The Member's authorization, execution, delivery and performance of this Agreement do not conflict with the charter or organizational documents of the Member or with any other agreement or arrangement to which the Member is a party or by which it, or its assets or properties, is bound.

(d) **Purchase Entirely for Own Account; Knowledge**. The Member (i) is acquiring its Membership Shares exclusively for the Member's own account, for investment purposes only and not with a view to or for the resale, distribution, subdivision or fractionalization thereof, and the Member has no contract, understanding, undertaking, agreement or arrangement of any kind with any Person to sell, transfer or pledge to any such Person its Membership Shares or portion thereof, nor does the Member have any plans to enter into any such contract, understanding, undertaking, agreement or arrangement; (ii) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company and has obtained, in such Member's judgment, sufficient information regarding the Company and its business and prospects to evaluate the merits and risks of its investment; (iii) in making its decision to acquire Membership Shares, the Member has been advised by its own business, tax and legal advisors and is not relying on the Company or the Manager or on any other Members with respect to the business, tax or legal considerations involved in such investment; and (iv) is able to bear the economic risk of an investment in Membership Shares for an indefinite period of time. The Member has been furnished access to such information and documents as it has requested and has been afforded an opportunity to ask questions of, and receive answers from, Representatives of the Company concerning the terms and conditions of this Agreement and the acquisition of Membership Shares.

ARTICLE 5 - MEMBERSHIP SHARES; CAPITALIZATION

5.1 **Common Membership Shares**. All Membership Interests of the Members in the Company shall be denominated in Membership Shares and set forth on the Member Registry attached as **Schedule 1** hereto. The Member Registry shall be amended from time to time as required to reflect issuances of additional Membership Shares to new Members, changes in the number of Membership Shares held by the Members, and to reflect the addition, substitution or dissociation of Members. The number of Membership Shares held by a Member shall not be affected by any (i) issuance by the Company of additional Membership Shares to other Members or (ii) a change in the Capital Account of such Member (other than such changes as are required to reflect additional Capital Contributions from such Member in exchange for the issuance of new Membership Shares).

5.2 **Capitalization**. The Company is authorized to issue up to Two Hundred Thousand (200,000) Membership Shares, designated "Common Membership Shares," the number of which Shares may be changed in the future with the approval of a Majority Vote of Membership Shares. With the approval of the Majority Vote of Membership Shares, the Company may issue Common Membership Shares as follows: (i) in connection with the admission of Additional Members in accordance with the provisions of *Section 13.2*; (ii) as the Members deem advisable to secure and retain the services of new key employees, consultants or independent contractors, and to provide incentives for such Persons to exert maximum efforts for the success of the Company; and (iii) to raise outside capital for the Company's business. The Company, with the approval of a Majority Vote of Membership Shares, is authorized to issue options or warrants to purchase Common Membership Shares, restricted Common Membership Shares (subject to vesting and repurchase rights in favor of the Company), and other securities convertible, exchangeable or exercisable for Common Membership Shares, on such terms as may be determined by the Majority Vote of Membership Shares.

5.3 Changes to Capital Structure. Subject to the terms of this Agreement, the terms of admission or issuance may provide for the creation of different classes, groups or series of Membership Shares having different rights, powers, preferences, restrictions and duties as determined by the Majority Vote of Membership Shares. Any creation of any new class, group or series of Membership Shares shall be reflected in an amendment to this Agreement indicating such rights, powers, preferences, restrictions and duties.

5.4 Membership Share Certificates. Membership Shares shall be represented by a certificate of membership (the "Membership Share Certificates"). The exact contents of a Membership Share Certificate shall be determined by action of the Members but shall be issued substantially in conformity with the requirements set forth herein. The Membership Share Certificates shall be numbered serially, as they are issued, shall be impressed with the Company's seal or a facsimile thereof, if any, and shall be signed by the Manager or duly authorized Members of the Company. Each Membership Share Certificate shall state the name of the Company, the fact that it is organized under the laws of the State of Idaho as a limited liability company, the name of the Person to whom issued, the date of issuance and the class of Membership Shares it represents. All Membership Share Certificates surrendered to the Company for Transfer shall be canceled and no new Membership Share Certificates shall be issued until the former Membership Share Certificate of like number and tenor shall have been surrendered and canceled; *provided, however*, in the case of a lost, destroyed or mutilated Membership Share Certificate, a new Certificate may be issued therefor on such terms and indemnity to the Company as the Members may prescribe.

5.5 Legend. Each Membership Share Certificate shall bear the following legend:

> "THE LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF WITHOUT COMPLYING WITH THE PROVISIONS OF THE OPERATING AGREEMENT (THE "AGREEMENT") BY AND AMONG THE MEMBERS OF **THE SOURCE STORE, LLC** , AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE WITH THE COMPANY. IN ADDITION TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SUCH AGREEMENT, NO TRANSFER OF THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE MAY BE MADE (A) EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER (THE "1933 ACT"), AND ALL APPLICABLE STATE SECURITIES LAWS OR (B) UNLESS SUCH TRANSFER IS PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT. THE HOLDER OF THIS CERTIFICATE BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE TERMS AND PROVISIONS OF THE AFORESAID AGREEMENT."

5.8 Voting of Membership Shares. The rights, privileges and powers, including voting powers, of each Common Membership Share shall be identical, with each Common Membership Share being entitled to one vote on all matters with respect to which the Members are entitled to vote as provided in this Agreement; *provided, however*, that Membership Shares which represent only Economic Rights of an Assignee who is the beneficial owner of such Membership Shares (but who has not been admitted as a Substitute Member of the Company) shall not be voted.

5.9 Redemption of Membership Shares. No Member shall have any right to require the redemption by the Company of any Membership Shares.

5.10 Federal and State Securities Laws. Each Member hereby acknowledges that the Membership Shares have not been registered under the 1933 Act, and have not been registered or qualified under the securities laws of any state or foreign jurisdiction, inasmuch as they are being acquired in a transaction not involving a public offering. As a result, the Members each acknowledge their understanding that an investment in Membership Shares is of a long-term nature and that the Membership Shares may not be resold or transferred by any Member without appropriate registration or the availability of an exemption from such requirements.

ARTICLE 6 -- MANAGER; RIGHTS AND DUTIES

6.1 Initial Manager. The Manager shall have the sole and exclusive right and power to manage the business of the Company, and shall have all of the rights and powers that may be possessed by managers under the Act, including without limitation those rights and powers described in this *Article 6*. The initial Manager of the Company shall be Michael L. Hodge II.

6.2 Management Authority. The Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

6.3 Officers. The Manager may appoint himself or other individuals as officers of the Company ("Officers"), which may include, but shall not be limited to or be required to include the following: a Chief Executive Officer, President, Vice President, Secretary, and such other officers as the Manager shall determine from time to time. The Manager may delegate a portion of his day-to-day management responsibilities to any such Officers, as determined by the Manager from time to time, and such Officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as so authorized by the Manager. Officers need not be Members of the Company, and any number of offices may be held by the same individual. The salaries or other compensation, if any, of the Officers of the Company (including the Manager, if applicable) shall be fixed from time to time by the Majority Vote of Membership Shares. The initial Officers of the Company are set forth on Schedule 2 attached hereto.

6.4 No Other Authority. Unless authorized to do so by this Agreement or pursuant to its provisions, no Member, Officer, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

6.5 Compensation of Manager. The Manager shall be reimbursed for all reasonable expenses incurred in managing the Company and shall be entitled to compensation in an amount to be determined from time to time by the Majority Vote of Membership Shares.

6.6 Manager's Standard of Care. In carrying out his duties and exercising his powers hereunder, the Manager shall exercise reasonable skill, care and business judgment. The Manager shall not be liable to the Company or to the other Members for any act or omission performed or omitted by him as Manager or Tax Matters Partner, unless such act or omission constitutes Disabling Conduct. In discharging his duties, the Manager shall be fully protected in relying in good faith upon the records required to be maintained under *Article 4* hereof and upon such information, opinions, reports or statements by any of the Company's other Members, or agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid.

6.7 Removal and Appointment of Managers.

(a) Additional Managers. Additional Persons may be appointed to the position of Manager (in addition to the initial Manager) with the affirmative vote, consent or approval of the Majority Vote of Membership Shares.

(b) Term of Manager. The Manager shall serve until or unless: (a) an Event of Dissociation of the Manager as a Member occurs; (b) the personal physician of the Manager shall state in writing that, in his or

her opinion, such Manager is physically or mentally incapacitated to such an extent that the Manager is unable to give prompt and intelligent attention to the Company's affairs, and the Manager shall be deemed to have resigned effective upon the filing in the Company's records of the physician's statement, whether or not the Manager may have been adjudicated or certified an incompetent person; or (c) the Manager is removed, with or without cause, by the affirmative vote, consent or approval of the Majority Vote of Membership Shares. Each individual by accepting the office of Manager, thereby agrees to cooperate in any medical examination necessary to implement this *Section 6.7*, waives the patient-physician privilege and consents to the disclosure of the Manager's medical records to the extent required to implement this *Section 6.7*, and agrees that the Manager's obligation to comply with this *Section 6.7* is specifically enforceable.

(c) **Liability of Manager.** If the Manager ceases to be a Manager for any reason hereunder, such Person shall not be discharged from any debts and obligations the Manager may have had to or on behalf of the Company existing at the time such Person ceases to be the Manager, regardless of whether, at such time, such debts or liabilities were known or unknown, actual or contingent. A Person shall not be liable as a Manager for Company debts and obligations arising after such Person ceases to be a Manager. Any debts, obligations, or liabilities in damages to the Company of any Person who ceases to be a Manager shall be collectible by any legal means and the Company is authorized, in addition to any other remedies at law or in equity, to apply any amounts otherwise distributable or payable by the Company to such Person to satisfy such debts, obligations or liabilities.

6.8 Vacancies. In the event of the resignation of the Manager or the termination of the Manager's responsibilities pursuant to *Section 6.7* above, a successor Manager shall be elected by the affirmative vote, approval or consent of the Majority Vote of Membership Shares. The resignation or termination of a Manager who is also a Member shall not affect such Person's rights as a Member and shall not constitute his withdrawal as a Member (unless such Person is also expelled as a Member of the Company pursuant to *Section 13.8* hereof).

6.9 Right to Rely. Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Members as to (a) the identity of any Member, Manager or Officer; (b) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Manager or Officer, or which are in any other manner germane to the affairs of the Company; or (c) the identity of the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company. With the specific authorization of a resolution of the Members, signed or approved by the Members, the signature of the Manager or any Officer shall be sufficient to execute agreements and documents on behalf of the Company, including, without limitation, filings with regulatory authorities as shall be necessary for the conduct and management of the Company's business.

6.10 Limitation on Liability. Neither the Manager or any Officer nor any of their respective Affiliates shall be liable, responsible or accountable in damages or otherwise to the Company or the Members for any act or omission by any such Person performed in good faith pursuant to the authority granted to such Person by this Operating Agreement or in accordance with its provisions, and in a manner reasonably believed by such Person to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; *provided*, that such act or omission did not constitute Disabling Conduct.

ARTICLE 7 - RIGHTS, DUTIES AND LIMITATIONS OF MEMBERS

7.1 Condition Precedent to Membership. No Person may become a Member of the Company without first signing this Agreement or a counterpart signature page hereof. By signing this Agreement, each Member expressly agrees to be bound by all of the terms and conditions set forth in this Agreement.

7.2 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the Act, and other applicable law. In addition, all debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and, unless

otherwise provided in the Act, no Member shall be obligated personally for any such debt, obligation or liability solely by reason of being a Member. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Manager or any Member for liabilities of the Company.

7.3 **Priority and Return of Capital.** No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, or distributions of Net Cash from Operations or other Company Property *provided, however,* that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company. Net Losses shall be apportioned first to Donnelly Prehn up to his cost basis (including any loans to the Company), then to Michael Hodge up to his cost basis (including any loans to the Company) and thereafter to all Members in proportion to their Membership Interest.

7.4 **Limitation on Management Rights.** Except as otherwise specifically provided in this Agreement, all determinations, decisions, approvals and actions affecting the Company and its business and affairs shall be determined, made, approved, or authorized by the Manager. All Members shall only be entitled to vote on any matter submitted to a vote of the Members under the terms of this Agreement. Assignees shall not be entitled to vote on any matters. A Member who resigns or withdraws shall become an Assignee.

7.5 **Acts Requiring a Majority Vote.** All matters voted upon by the Members shall be determined by the Majority Vote of Membership Shares.

7.6 **Pre-emptive Rights.** Except as may be otherwise specifically provided in this Agreement, no Member shall have any pre-emptive or other right to make any additional Capital Contributions, including without limitation, in connection with the admission of any Additional Member pursuant to *Section 13.2* hereof.

7.7 **Interest.** No Member shall be entitled to receive interest on such Member's Capital Contributions or Capital Account balance.

ARTICLE 8 - MEETINGS OF MEMBERS

8.1 **Annual Meeting.** The annual meeting of the Members shall be held once a year on the date determined each year by a Majority Vote of Membership Shares at a location designated by the Members or on such other date as the Members determine, commencing with the calendar year 2003. The Manager shall prepare or cause to be prepared an agenda of matters to be considered by the Members at each annual meeting. The day fixed for the annual meeting shall not be a legal holiday in the State of Idaho. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Company.

8.2 **Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Majority Vote of Membership Shares. Business transacted at any special meeting will be limited to the purpose or purposes stated in the meeting Notice.

8.3 **Notice of Meetings.** A written Notice stating the date, time, and purpose(s) of the special meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, in the manner provided in *Section 20.8* hereof, to each Member of record entitled to vote at such meeting.

8.4 **Waiver of Notice.** Notice of meetings of Members may be waived if, at any time before or after the action is completed, each Member entitled to Notice or to participate in the action to be taken, submits a signed written waiver of the Notice requirements, or if such requirements are waived, in such other manner permitted by applicable law. Neither the business to be transacted at, nor the purpose of, the meeting need be specified in the written waiver of Notice. Attendance at any meeting by a Member (in person or by proxy) will result in both of the following:

(a) Waiver of objection to lack of Notice or defective Notice of the meeting, unless the Member, at the beginning of the meeting or upon the Member's arrival, objects to the holding of the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting; and

(b) Waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting Notice, unless the Member objects to considering the matter when it is presented and does not thereafter vote for or assent to any action taken at the meeting regarding such matter.

8.5 Meeting of all Members. If all of the Members shall meet at any time and place, and all Members consent to the holding of a meeting at such time and place, such meeting shall be valid without call or Notice, and lawful action may be taken at any such meeting.

8.6 Record Date. For the purpose of determining Members entitled to vote at any meeting of Members or any adjournment thereof, or Members or Assignees entitled to receive payment of any Distributions of Net Cash from Operations or other Company Property, or in order to make a determination of Members or Assignees for any other purpose, the date on which Notice of the meeting is deemed delivered or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members and Assignees. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this *Section 8.6*, such determination shall apply to any adjournment thereof.

8.7 Quorum. Members representing a Majority Vote of Membership Shares present in person or represented by proxy shall constitute a quorum at any meeting of the Members. Regardless of whether a quorum is present at any such meeting, the Members present or represented at such meeting may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further Notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a Notice of the adjourned meeting shall be given to each Member of record. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Membership Shares whose absence would cause less than a quorum.

8.8 Manner of Acting. If a quorum is present, the affirmative vote of a Majority Vote of Membership Shares shall be the act of the Members as to any matter submitted to a vote or requiring the consent of the Members.

8.9 Proxies. A Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize other persons to act for such Member by proxy. Each proxy shall be in writing and signed by the Member or the Member's authorized Representative. Such proxy shall be filed with the Company. No proxy shall be valid after six (6) months from the date of its execution, unless otherwise provided in the proxy.

8.10 Telephonic Attendance. Members may participate in any meeting of the Members with the same effect as being present in person by means of conference telephone or similar communications equipment through which all persons participating in the meeting may communicate with the other participants. A Member must be permitted to participate in a meeting by that means if the Member so requests. All participants shall be advised of the communications equipment and the names of the participants in the conference shall be divulged to all participants. Participation in a meeting pursuant to this *Section 8.10* constitutes presence in person at such meeting.

8.11 Action by Written Consent of Members Without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without Notice and without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members having not less than the minimum

number of Membership Shares that would be necessary to take the action at a meeting at which the holders of all Membership Shares entitled to vote on the action were present and voted. In no instance where action is authorized by written consent shall a meeting of the Members be called or Notice be given; *provided, however*, a copy of the action taken by written consent shall be filed with the records of the Company. Any action taken under this *Section 8.11* shall be effective upon the date of the latest signature thereon, unless the consent specifies a different effective date. Reasonably prompt Notice of any action taken without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to Notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of Members to take the action were obtained. Written consent by the Members pursuant to this *Section 8.11* shall have the same force and effect as a vote of such Members held at a duly held meeting of the Members and may be stated as such in any document.

8.12 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the presiding officer shall order or any Member shall demand that voting be by written ballot.

8.13 No Cumulative Voting. No Members shall be entitled to cumulative voting in any circumstance.

ARTICLE 9 - CAPITAL CONTRIBUTIONS

9.1 Initial Contributions. Each Initial Member shall make the Capital Contribution described for that Member on **Schedule 1** at the time and on the terms specified on **Schedule 1** and shall perform that Member's Commitment and shall receive that number of Membership Shares described on **Schedule 1**. If no time for the Capital Contribution is specified, the Capital Contribution shall be made at such time as the Initial Member signs this Agreement or a counterpart signature page hereto.

9.2 Additional Member Contributions. Each Additional Member shall make the Capital Contribution to which such Member has agreed, at the time or times and upon the terms to which the Additional Member has agreed in its Subscription Agreement, as provided in *Section 13.2* hereof. Any such Capital Contributions, and the name and address of any Additional Member making such Capital Contribution shall be added to **Schedule 1**, along with such Additional Member's number of Membership Shares and Sharing Ratio.

9.3 Additional Capital Contributions. In addition to the Capital Contributions set forth on **Schedule 1**, Members may determine from time to time through a Majority Vote of Membership Shares that additional Capital Contributions are needed to enable the Company to conduct and operate its business. Such additional Capital Contributions shall be a Commitment of each Member, subject to the remedies set forth in *Section 9.4* below. Upon the Members making such a determination, the Manager shall give Notice to all Members at least fifteen (15) Business Days prior to the date on which such Commitment is due. Such notice shall set forth the aggregate amount of and purpose for which such additional Capital Contributions are needed, the amount of each Member's Commitment, and the date by which the Members are required to contribute their additional Capital Contributions. Each Member's Commitment shall be the Member's proportionate share of the aggregate additional Capital Contribution, based upon the Member's Sharing Ratio.

9.4 Enforcement of Commitments. In the event any Member (a "Delinquent Member") fails to perform the Member's Commitment, as set forth in **Schedule 1** or in its Subscription Agreement, or fails to make any additional Capital Contribution as provided in *Section 9.3*, as applicable, the Manager shall give the Delinquent Member a Notice of the failure to meet the Commitment. If the Delinquent Member fails to perform the Commitment (including the payment of any costs associated with the failure to comply with the Commitment and interest on such obligations at the Default Interest Rate) within ten (10) Business Days of the giving of the Notice, the Company may take such action, including but not limited to, enforcing the Commitment in a court of appropriate jurisdiction in the state in which the Principal Office is located. Each Member expressly agrees to the exclusive jurisdiction of such courts, but only for the enforcement of Commitments. The Members may elect to allow the other Members to contribute the deficiency amount of the Commitment in proportion to each such Member's

Sharing Ratios, with those Members who contribute ("Contributing Members") contributing additional amounts equal to any amount of the Commitment not contributed by the Delinquent Member. The Contributing Members shall be entitled to treat such additional amounts contributed pursuant to this *Section 9.4* as a loan from the Contributing Members to the Delinquent Member, bearing interest at the Default Interest Rate and secured by the Delinquent Member's Membership Interest in the Company. Until they are fully repaid, the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been otherwise entitled. Notwithstanding the foregoing, no Commitment or other obligation to make an additional Capital Contribution may be enforced by a creditor of the Company or other Person other than the Company, unless the Delinquent Member expressly consents to such enforcement or to the assignment of the obligation to such creditor.

9.5 Loans by Members, Manager(s) and their Affiliates. In the event the Company does not have sufficient cash to pay its obligations, a Member, a Manager or any Affiliate thereof, with the consent of a Majority Vote of Membership Shares, may advance all or part of the needed funds to or on behalf of the Company. If more than one Member wishes to advance funds to the Company as contemplated by this *Section 9.5*, the Members shall advance such funds in proportion to their relative Sharing Ratios. An advance pursuant to this *Section 9.5* shall constitute a loan from that Person to the Company, and shall not constitute a Capital Contribution. Advances made pursuant to this *Section 9.5* may, and, if requested by the lending Person or Persons, shall be, evidenced by a promissory note from the Company to the lending Person(s) bearing a non-usurious floating rate of interest equal to the Prime Rate plus 6%, which shall be adjusted on the first day of each calendar month for as long as the loan is outstanding, based on the Prime Rate in effect on the Business Day before the first day of such month. "Prime Rate" means the prime rate (or base rate) reported in the "Money Rates" column or section of *The Wall Street Journal* as being the base rate on corporate loans at larger U.S. money center banks on the first date on which *The Wall Street Journal* is published in each month. In the event *The Wall Street Journal* ceases publication of the Prime Rate, then the "Prime Rate" shall mean the "prime rate" or "base rate" announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank). In the event that bank discontinues the practice of announcing that rate, "Prime Rate" shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers. The Company shall not be permitted to make any current Distributions to its Members, as contemplated in *Section 11.2(a)* hereof, unless and until all loans pursuant to this *Section 9.5* have been repaid in full.

ARTICLE 10 - CAPITAL ACCOUNTS AND ALLOCATIONS

10.1 Capital Accounts.

(d) Establishment and Maintenance. A separate Capital Account will be maintained for each Member and Assignee throughout the term of the Company in accordance with the rules of section 1.704-1(b)(2)(iv) of the Regulations. Each Member's and Assignee's Capital Account will be *increased* by (1) the amount of money contributed by such Person to the Company; (2) the fair market value of property contributed by such Person to the Company (net of liabilities secured by such contributed property subject to which the Company is considered to assume or take such property, as provided in section 752 of the Code); (3) allocations to such Member or Assignee of Net Profits; (4) any items in the nature of income and gain that are specially allocated to the Member or Assignee pursuant to this Agreement; and (5) allocations to such Member or Assignee of income and gain exempt from federal income tax. Each Member's or Assignee's Capital Account will be *decreased* by (1) the amount of money distributed to such Person by the Company; (2) the fair market value of Company Property distributed to such Person by the Company (net of liabilities secured by such distributed Property subject to which such Person is considered to assume or take such property, as provided in section 752 of the Code); (3) the amount of Net Loss and items of loss, deduction and expense that are specially allocated to the Member or Assignee pursuant to this Agreement; and (4) any other decreases required by the Regulations. In the event of a permitted Transfer of a Membership Interest or of Economic Rights in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Rights.

(e) **Compliance With Regulations.** The manner in which Capital Accounts are to be maintained pursuant to this *Section 10.1* is intended to comply with the requirements of section 704(b) of the Code and the Regulations promulgated thereunder. If in the opinion of the Company's legal counsel or accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this *Section 10.1* should be modified in order to comply with section 704(b) of the Code and the Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this *Section 10.1*, the Tax Matters Partner shall modify the method in which Capital Accounts are maintained; *provided, however*, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

10.2 Allocations to Capital Accounts.

(a) **General Rule.** Except as provided in this Agreement, Net Profit (and items thereof) and Net Loss (and items thereof) for any Fiscal Year shall be allocated among the Members in a manner such that if the Company were dissolved, its assets sold for their book value, its affairs wound up and its remaining assets (after payment of its liabilities) distributed to the Members in accordance with their respective positive Capital Account balances immediately after making such allocation, such Distributions would, as nearly as possible, be equal (proportionately) to the amount of the Distributions that would be made pursuant to *Article 11* hereof. The Tax Matters Partner may make such other assumptions (whether or not consistent with the foregoing) as it deems necessary or appropriate in order to effectuate the intended economic sharing arrangement of the Members as reflected in *Article 11* of this Agreement.

(b) **Regulatory and Related Allocations.** Notwithstanding any other provision in this Agreement to the contrary, the following special allocations will be made in the following order:

(i) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with section 1.704-2(g) of the Regulations. Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with section 1.704-2 of the Regulations. This *Section 10.2(b)(i)* is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(ii) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations or distributions described in sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations with respect to such Member's Capital Account, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible; *provided*, that an allocation pursuant to this *Section 10.2(b)(ii)* shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Section 10.2* have been tentatively made as if this *Section 10.2(b)(ii)* were not in this Agreement. This *Section 10.2(b)(ii)* is intended to constitute a "qualified income offset" within the meaning of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(iii) **Nonrecourse Deductions.** Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Members in accordance with their respective Capital Accounts.

(iv) **Gross Income Allocation.** In the event any Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Member's Adjusted Capital Account Deficit as quickly as possible; *provided*, that

an allocation pursuant to this *Section 10.2(b)(iv)* shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Section 10.2* (other than *Section 10.2(b)(ii)*) have been tentatively made as if this *Section 10.2(b)(iv)* were not in this Agreement.

(v) **Loss Allocation Limitation.** No allocation of Net Loss (or items thereof) shall be made to any Member to the extent such allocation would create or increase an Adjusted Capital Account Deficit with respect to such Member.

(c) **Regulatory Allocations.** The allocations set forth in this *Section 10.2* (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations under section 704 of the Code. Notwithstanding any other provision of this *Article 10* (other than the Regulatory Allocations), it is the intent of the Members that the Regulatory Allocations shall be taken into account in allocating other Company items of income, gain, loss, deduction and expense among the Members so that, to the extent possible, the net amount of such allocations of other Company items and the Regulatory Allocations shall be equal to the net amount that would have been allocated to the Members pursuant to this *Section 10.2* if the Regulatory Allocations had not been made.

(d) **Section 754 Adjustments.** Pursuant to section 1.704-1(b)(2)(iv)(m) of the Regulations, to the extent an adjustment to the adjusted tax basis of any Company asset under sections 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(e) **Transfer of or Change in Membership Interests.** The Tax Matters Partner is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation and/or special allocation of items of Company income, gain, loss, deduction and expense with respect to a newly issued Membership Interest, a transferred Membership Interest or transferred Economic Rights or a redeemed Membership Interest. A transferee of a Membership Interest or Economic Rights shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred Membership Interest.

(f) **Organization Expenses.** At the request of a the Members through a Majority Vote of Membership Shares, the Tax Matters Partner shall allocate Organization Expenses (and, to the extent necessary, any other items in lieu thereof) to the Capital Accounts of the Members so that, as nearly as possible, the cumulative amount of such organization expenses (and such other items in lieu thereof) allocated with respect to each Membership Interest is the same amount.

(g) **Allocation Periods and Unrealized Items.** Subject to applicable Regulations and notwithstanding anything expressed or implied to the contrary in this Agreement, the Tax Matters Partner may determine allocations to Capital Accounts based on an annual, quarterly or other period and/or on realized and unrealized net increases or net decreases (as the case may be) in the fair market value of Company Property.

10.3 Tax Allocations.

(a) Items of Company income, gain, loss, deduction and expense shall be allocated, for federal, state and local income tax purposes, among the Members in the same manner as Net Profit (and items thereof) and Net Loss (and items thereof) of which such items are components were allocated pursuant to *Section 10.2* above; *provided*, that solely for federal, state and local income tax purposes, allocations shall be made in accordance with section 704(c) of the Code and the Regulations promulgated thereunder, to the extent so required thereby.

(b) Allocations pursuant to this *Section 10.3* are solely for federal, state and local tax purposes

and shall not affect, or in any way be taken into account in computing, any Member's or Assignee's Capital Account or share of Net Profit (and items thereof) or Net Loss (and items thereof).

(c) The Members are aware of the tax consequences of the allocations made by this *Section 10.3* and hereby agree to be bound by the provisions of this *Section 10.3* in reporting their shares of items of Company income, gain, loss, deduction and expense.

10.4 Determination of Tax Matters Partner. All matters concerning the computation of Capital Accounts, the allocation of Net Profit (and items thereof) and Net Loss (and items thereof), the allocation of items of Company income, gain, loss, deduction and expense for tax purposes, the making of revocations of elections and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Tax Matters Partner, with the affirmative vote, consent or approval of a Majority Vote of Membership Shares. Such determination shall be final and conclusive as to all the Members. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the Tax Matters Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Members as reflected in *Article 11* below, the Tax Matters Partner may make such modification.

ARTICLE 11- DISTRIBUTIONS

11.1 Withdrawals and Distributions in General. No Member shall have the right to withdraw or demand Distributions of any amount in the Member's Capital Account, except as expressly provided in this *Article 11*.

11.2 Current and Mandatory Tax Distributions.

(a) Current Distributions. Net Cash from Operations shall be distributed on a quarterly basis in accordance with each Member's Membership Share.

(b) Mandatory Tax Distributions. The Company shall distribute to the Members and Assignees, in accordance with their Sharing Ratios, from any Net Cash from Operations, an amount sufficient to pay the federal and state income taxes on any income for such Fiscal Year that passes through the Company to the Members and Assignees, under the applicable provisions of the Code (net of any tax benefit produced for the Members and Assignees by the Company's losses, deductions and credits for the same Fiscal Year). Such taxes shall be determined conclusively by presuming that (a) all taxable income that passes through to a Member or Assignee will be taxed at the maximum federal rate (without regard to exemptions or phase-outs of lower tax rates) and at the maximum State of Idaho rate at which income of any natural person or Entity, as applicable, can be taxed in the calendar year that includes the last day of the Fiscal Year and (b) losses, deductions and credits produce tax benefits using the same tax rates. The Company shall make any such mandatory tax Distributions in a timely manner at such intervals as will allow the taxes (including, without limitation, estimated tax payments) attributable to the income passed through the Company to any Member or Assignee to be paid when due. If the aggregate amount of such Distributions under this *Section 11.2(b)* exceeds such Member's or Assignee's actual federal and state income taxes for such year, the Company's obligation to make further Distributions to the Members and Assignees pursuant to this *Section 11.2(b)* shall be reduced by the amount of such excess until such excess has been fully deducted from such Distribution.

11.4 Liquidating Distributions. Notwithstanding the other provisions of this *Article 11*, Distributions in liquidation of the Company shall be made to each Member and Assignee in the manner set forth in *Section 14.2* of this Agreement.

11.4 Distributions in Kind. The Company may make Distributions in kind if a Majority Vote of Membership Shares determines a disposition of assets at the time of Distribution would be in the best interests of the

Members. For all purposes of this Agreement, (i) any Company Property (other than cash) that is distributed in kind to one or more Members with respect to a Fiscal Year (including any in-kind Distribution upon the dissolution and winding-up of the Company) shall be deemed to have been sold for cash (in U.S. dollars) equal to its fair market value (net of any relevant liabilities secured by such Property); (ii) the unrealized gain or loss inherent in such Company Property shall be treated as recognized gain or loss for purposes of determining Net Profit or Net Loss; (iii) such gain or loss shall be allocated to the Member's Capital Accounts pursuant to *Article 10* for such Fiscal Year; and (iv) such in-kind Distribution shall be made after giving effect to such allocation pursuant to *Article 10*.

11.5 Withholding. Notwithstanding anything expressed or implied to the contrary in this Agreement, the Manager is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any federal, state, local and foreign withholding requirement with respect to any payment, allocation or Distribution by the Company to any Member, Assignee or other Person. All amounts so withheld, and, in the manner determined by the Manager, amounts withheld with respect to any payment, allocation or distribution by any Person to the Company, shall be treated as Distributions to the Members and Assignees under the applicable provisions of this Agreement. If any such withholding requirement with respect to any Member or Assignee exceeds the amount distributable to such Member or Assignee under this Agreement, or if any withholding requirement was not satisfied with respect to any item previously allocated, paid or distributed to such Member or Assignee, such Member, or Assignee or any successor or assignee with respect to such Person, hereby indemnifies and agrees to hold harmless the Tax Matters Partner, the Manager, the other Members and the Company for such excess or amount or such amount required to be withheld, as the case may be, together with any applicable interest, additions or penalties thereon.

11.6 Restrictions on Distributions. The foregoing provisions of this *Article 11* to the contrary notwithstanding, no Distribution shall be made (a) if such Distribution would violate the Act, or any other law, rule, regulation, order or directive of any Governmental Body then applicable to the Company; (b) other than mandatory tax-related Distributions pursuant to *Section 11.2(b)* above, if any, to the extent the Manager determines, with the affirmative vote, consent or approval of the Majority Vote of Membership Shares, that any amount otherwise distributable should be retained by the Company to pay, or to establish Reserves for the payment of, any liability or obligation of the Company, whether liquidated, fixed, contingent or otherwise, or to hedge an existing investment; or (c) to the extent that the Manager determines, with the affirmative vote, consent or approval of the Majority Vote of Membership Shares, that the Net Cash from Operations available to the Company is insufficient to permit such Distribution.

ARTICLE 12 - TRANSFER OF INTERESTS

12.1 Transfers. No Member or Assignee (in each case, the "Transferor") may Transfer all or any portion of such Person's interest in the Company, whether the Transferor's Membership Interest or Economic Rights (in each case, an "Interest"), ***unless*** the Transfer is a Permitted Transfer as described in *Section 12.2* below. Any purported Transfer, other than in strict accordance with this *Article 12*, shall be null and void *ab initio*, and of no force or effect whatsoever against the Company, any other Member, any creditor of the Company or any claimant against the Company; *provided, however*, that, *if* the Company is required to recognize a Transfer not permitted under *Section 12.2* (or if a Majority Vote of the Remaining Membership Shares, in their discretion, elect to recognize a Transfer that is not so permitted), the Interest transferred shall be strictly limited to the Transferor's Economic Rights. The provisions of this *Section 12.1* and the provisions of *Section 12.4* below shall not apply to Transfers occurring with respect to a Financing Event.

12.2 Permitted Transfers.

(a) Subject to the conditions and restrictions set forth in *Section 13.4* below, each of the following Transfers shall be a "Permitted Transfer" for purposes of this Agreement:

(i) all Members who are natural Persons may Transfer all or any part of their Interest by way of gift for estate planning purposes to any member of their Immediate Family or to any trust, partnership or similar estate planning vehicle for the benefit of any such Immediate Family member or members;

(ii) all Members who are not natural Persons may transfer all or part of their Interest to their respective equity holders;

(iii) all Members may Transfer all or any part of their Interest to another Member; and

(iv) all Members may transfer all or any part of their Interest if a Majority Vote of Membership Shares shall have approved the Transfer, and the Transferor has complied with the Right of First Refusal imposed by *Section 12.4* below.

(b) Notwithstanding any provision of *Section 12.2(a)* to the contrary, any Assignee of a Permitted Transfer under *Section 12.2(a)* shall be admitted as a Substitute Member only in accordance with the provisions of *Section 13.3* hereof; *provided, however*, that (i) any current Member who receives a Permitted Transfer described in *Section 12.2(a)(iii)* above shall be automatically admitted as a Substitute Member with respect to the Interest transferred without any vote or other action of the Members pursuant to *Section 13.3*; and (ii) an Assignee of a Permitted Transfer described in *Section 12.2(a)(iv)* above that has been approved by a Majority Vote of Membership Shares shall, unless otherwise expressly provided in connection with such vote, be automatically admitted as a Substitute Member without a separate vote of the Members pursuant to *Section 13.3*.

12.3 Conditions to Permitted Transfers. Notwithstanding any provision of *Section 12.2* to the contrary, a Transfer shall not be permitted under this *Article 12* unless and until the following conditions are satisfied:

(a) The Transferor and Assignee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the Assignee to be bound by the terms and conditions of this Agreement. In all cases, the Company shall be reimbursed by the Transferor and/or Assignee for all costs and expenses that the Company reasonably incurs in connection with the Transfer.

(b) The Transferor and Assignee shall provide to the Company the Assignee's taxpayer identification number, sufficient information to determine the Assignee's initial tax basis in the Interest transferred and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any Distributions otherwise provided for in this Agreement with respect to any Interest transferred until it has received such information.

(c) If required by a Majority Vote of Membership Shares upon the advice of legal counsel, the Transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Members, that (i) the Transfer will not cause the Company to terminate for federal income tax purposes under section 708 of the Code; (ii) the Transfer will not cause the application to the Company, to any Company Property or to any of the Members of the rules of sections 168(g)(1)(B) and 168(h) of the Code (generally referred to as the "tax exempt entity leasing rules"); (iii) the Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940; and (iv) either the Interest transferred has been registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or the Transfer is exempt from all applicable registration requirements and will not violate any applicable laws regulating the transfer, issue and sale of securities.

(d) If the Assignee is to become a Substitute Member as a result of the Transfer, the provisions of *Section 13.3* shall have been complied with.

12.4 Right of First Refusal.

(a) Grant. The Company and the Members are hereby granted a right of first refusal (the "Right of First Refusal"), exercisable in connection with any proposed Transfer of an Interest (or portion thereof), except for any Permitted Transfers described in clauses (i), (ii) and (iii) of *Section 12.2(a)* above, or any Transfer associated with a Financing Event.

(b) Notice of Intended Transfer. In the event a Transferor desires to accept a bona fide third party offer for the Transfer of all or any part of the Transferor's Interest (the Interest subject to such offer being hereinafter referred to as the "Target Interest"), the Transferor shall promptly deliver to the Company and the other Members written notice (the "Transfer Notice") of the terms and conditions of the offer, including the purchase price and the identity of the third party offeror.

(c) Exercise of Right. For a period of thirty (30) days following receipt of the Transfer Notice (the "Company Exercise Period"), the Company shall have the right to purchase all of the Target Interest specified in the Transfer Notice upon the same terms and conditions described therein or upon terms and conditions which do not materially vary from those specified in the Transfer Notice. The determination as to whether the Company will exercise its Right of First Refusal shall be made by a Majority Vote of the Remaining Membership Shares. The Right of First Refusal shall be exercisable by the Company's delivery to the Transferor of written notice to that effect (the "Company Exercise Notice") prior to the expiration of the Company Exercise Period. If such right is not exercised by the Company within the Company Exercise Period, then the non-selling Members (the "Remaining Members") shall have the right, exercisable within thirty (30) days immediately following expiration of the Company Exercise Period (the "Member Exercise Period") to purchase all (but not less than all) of the Target Interest specified in the Transfer Notice upon the same terms and conditions described therein or upon terms and conditions which do not materially vary from those specified therein, with such right exercisable by those Remaining Members exercising such right giving the Transferor written notice to that effect (the "Member Exercise Notice") prior to the expiration of the Member Exercise Period (the Member Exercise Notice, together with the Company Exercise Notice, is referred to as the "Exercise Notice"). If more than one Remaining Member shall exercise its Right of First Refusal, the Remaining Members shall purchase the Target Interest in such proportion as they shall agree; and, absent such agreement, the Remaining Members shall purchase the Target Interest in proportion to their Sharing Ratios.

(d) Purchase of Target Interest. If the foregoing Right of First Refusal is exercised by the Company (which exercise must be approved by a Majority Vote of the Remaining Membership Shares, as provided above), or by the Remaining Members, then the Company or the Remaining Members, as appropriate, shall effect the purchase of the Target Interest, including payment of the purchase price therefor, on the same terms as specified in the Exercise Notice, and the Transferor shall deliver to the Company or the Remaining Members, as appropriate, the Membership Share Certificate(s), if any, representing the Target Interest to be purchased, each such Membership Share Certificate to be properly endorsed for Transfer. Should the purchase price specified in the Transfer Notice be payable in Property other than cash or evidences of indebtedness, the Company or the Remaining Members, as appropriate, shall have the right to pay the purchase price in the same form of Property or, at their option, in the form of cash equal in amount to the value of such Property. If the Transferor and the Company or the Remaining Members, as appropriate, cannot agree on such cash value, or on the value of the Property proposed to be used by the Company or the Remaining Members, as the case may be, within five (5) days after the Transferor's receipt of a relevant Exercise Notice, the valuation shall be made by an appraiser of recognized standing selected by the Transferor and the Company or the Remaining Members, as appropriate; or, if they cannot agree on such appraiser within the foregoing 5-day period, each party shall select an appraiser of recognized standing, and the two appraisers so selected shall select a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of the appraisal shall be shared equally by the Transferor and by the Company or the Remaining Members, as appropriate. The closing of the sale shall be held on the *later of* (i) the tenth (10^{th}) business day following delivery of the Exercise Notice, or (ii) the tenth (10^{th}) business day after the valuation shall have been finalized.

(e) **Non-Exercise of Right.** In the event that neither the Company Exercise Notice nor the Member Exercise Notice is given to the Transferor within the Company Exercise Period or the Member Exercise Period, as appropriate, the Transferor shall have a period of ninety (90) days thereafter in which to sell or otherwise Transfer the Target Interest to the third party offeror identified in the Transfer Notice on such terms and conditions (including, without limitation, purchase price) not more favorable to the third party offeror than those specified in the Transfer Notice; *provided, however*, that under no circumstances may any such sale or disposition be effected in contravention of the provisions of *Section 12.3* (and, if the Transfer is intended to result in the Assignee becoming a Substitute Member, in accordance with the provisions of *Section 13.3*). In the event the Transferor does not effect the Transfer of the Target Interest within the specified 90-day period, the Company's and Remaining Members' Rights of First Refusal shall continue to be applicable to any subsequent Transfer of the Target Interest by the Transferor.

ARTICLE 13 - ADDITIONAL MEMBERS; EVENTS OF DISSOCIATION; WITHDRAWALS

13.1 Admissions. No Person shall be admitted to the Company as an Additional Member or as a Substitute Member, except in accordance with *Section 13.2* or *Section 13.3*, respectively. Any purported admission which is not in accordance with this *Article 13* shall be null and void *ab initio*. Upon admission of any Additional or Substitute Member, or upon an Event of Dissociation with respect to any Member, the books and records of the Company, including, without limitation, **Schedule 1** hereto, shall be revised accordingly to reflect such admission or Event of Dissociation.

13.2 Admission of Additional Members. A Person shall become an Additional Member pursuant to the terms of this Agreement only if and when each of the following conditions is satisfied: (a) a Majority Vote of Membership Shares consent to such admission, and the terms and conditions thereof, including, without limitation, the nature and amount of the Capital Contribution to be contributed by such Person; (b) the Company receives a signed and completed Subscription Agreement and/or such other documents and instruments as may be necessary or appropriate in the opinion of counsel to the Company to confirm the agreement of such Person to become an Additional Member and to be bound by the terms and conditions of this Agreement; and (c) the Company receives such Person's Capital Contribution as so determined.

13.3 Admission of Assignee as Substitute Member. An Assignee of an Interest may be admitted as a Substitute Member and admitted to all rights of the Member who initially assigned the Interest, including without limitation, all Management Rights with respect thereto, only if and when each of the following conditions is satisfied:

(a) The Company receives such documents and instruments as may be necessary or appropriate in the opinion of counsel to the Company to confirm the agreement of such Person to become a Substitute Member and to be bound by the terms and conditions of this Agreement;

(b) Such Assignee shall have paid to the Company the amount determined by the Members to be equal to the costs and expenses incurred in connection with such Transfer, including, without limitation, costs incurred in preparing and filing such amendments to this Agreement as may be required;

(c) A Majority Vote of Membership Shares consents to such admission, which consent may be given or arbitrarily withheld in the sole and absolute discretion of each such Member;

(d) If required by the Members, such Assignee shall execute and swear to an instrument by the terms of which such Person acknowledges that the relevant Interest has not been registered under the Securities Act of 1933, or any applicable state securities laws, and covenants, represents and warrants that such Assignee acquired the relevant Interest for investment only and

not with a view to the resale or distribution thereof;

(e) If the Assignee is not a natural person of legal majority, the Assignee provides the Company with evidence reasonably satisfactory to counsel for the Company of the authority of the Assignee to become a Member and to be bound by the terms and conditions of this Agreement; and

(f) Such Assignee shall furnish the Company with such other similar information as the Members may reasonably request.

13.4 Rights and Obligations of Transferors and Assignors.

(a) A Transfer by any Transferor shall not itself dissolve the Company or entitle the Assignee to become a Substitute Member or exercise any rights of a Member, including, without limitation, any Management Rights, except in accordance with the provisions of *Section 13.3* above.

(b) Except as hereinafter provided, any Transfer of a Transferor's Interest, including, without limitation, any involuntary Transfer by operation of law or otherwise, shall eliminate the Transferor's power and right to vote (in proportion to the extent of the Interest transferred), on any matter submitted to the Members; and for voting purposes, such Interest shall not be counted as outstanding in proportion to the extent of the Interest transferred. A Transfer of a Transferor's Interest, however, shall not otherwise eliminate the Member's entitlement to any other Management Rights associated with the Member's interest, including, without limitation, rights to information.

(c) A Substitute Member shall have, to the extent of the Interest transferred, all the rights and powers, and shall be subject to all the restrictions and liabilities, of a Member, and shall be liable for any obligations of the Transferor to make Capital Contributions. Notwithstanding the admission of a Substitute Member, the Transferor shall not be released from any of the Transferor's liabilities and obligations to the Company outstanding as of the effective time of the Transfer solely as a result of the Transfer, including, without limitation, the Transferor's Commitment.

(d) An Assignee who is not admitted as a Substitute Member pursuant to *Section 13.3* shall be entitled only to the Economic Rights with respect to the Interest transferred, and shall have no Management Rights (including, without limitation, voting rights or rights to any information or accounting of the affairs of the Company or to inspect the books or records of the Company) with respect to the interest transferred. If the Assignee thereafter becomes a Substitute Member, the voting rights and all other Management Rights associated with the Interest transferred shall be restored and shall be held by the Substitute Member along with all Economic Rights with respect such Interest.

(e) If a court of competent jurisdiction charges an Interest in the Company with the payment of an unsatisfied amount of a judgment, to the extent so charged, the judgment creditor shall be treated as an Assignee; *provided*, that any such charge not satisfied within the 60-day period specified in *Section 13.6(c)* shall cause an Event of Dissociation thereunder.

13.5 Distributions and Allocations Regarding Transferred Interests. Upon any Transfer during any Fiscal Year made in compliance with the provisions of this Agreement, Net Profits and Net Losses and all other items attributable to such Interest for the Fiscal Year shall be divided and allocated between the Transferor and the Assignee by taking into account their varying interests during the Fiscal Year in accordance with section 706(d) of the Code, using any conventions permitted by law and selected by the Tax Matters Partner. All Distributions on or before the date of the Transfer shall be made to the Transferor and all Distributions thereafter shall be made to the Assignee.

13.6 Events of Dissociation. Each of the following events shall be an "Event of Dissociation" for purposes of this Agreement which shall terminate the continued membership in the Company of a Member affected thereby and which cause such Member or any successor in interest thereto to be deemed an Assignee for purposes of this Agreement with respect to any Interest in the Company held thereby, with the consequence that the Event of Dissociation will eliminate the power and right of such Member to vote on any matter submitted to the Members (and cause such Interest to not be counted as outstanding) unless and until the successor in interest, if any, holding such Interest is admitted as a Member in accordance with *Section 13.3* and the voting rights associated therewith are restored in accordance with *Section 13.4(d)*):

(a) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;

(b) The expulsion of a Member pursuant to *Section 13.8*;

(c) The Bankruptcy of a Member or the entry of a charging order against the Member's Interest in the Company that is not released or satisfied within 60 days;

(d) In the case of a Member acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(e) In the case of a Member that is a separate Entity other than a corporation, the dissolution and commencement of winding up of the separate Entity; or

(f) In the case of a Member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its charter.

13.7 Withdrawal. No Member has the power to withdraw voluntarily from the Company. A Member that purports to withdraw voluntarily from the Company prior to any dissolution of the Company shall be in breach of this Agreement, shall be liable to the Company for any Damages arising directly or indirectly from such purported withdrawal and shall not be entitled to any Distributions from the Company by reason of such withdrawal, including, without limitation, any distribution described in Section 53-630 of the Act. The provisions of this *Section 13.7* (other than the prohibition on Distributions, which shall apply in all circumstances) shall not apply to withdrawals resulting from any Event of Dissociation, including, without limitation, the death or adjudicated incompetence of a Member, *other than* an expulsion of a Member by the Members as provided in *Section 13.8* below.

13.8 Expulsion. A Member may be expelled from the Company upon a determination by a Majority Vote of Membership Shares (or by a court upon application of any Member) that the Member has been guilty of Disabling Conduct. An expelled Member shall be treated as having withdrawn voluntarily from the Company in breach of this Agreement on the date of the determination of expulsion by the Members or the court.

ARTICLE 14 - DISSOLUTION AND WINDING UP

14.1 Dissolution Events. The Company shall dissolve and commence winding up and liquidation upon the first to occur of any of the following (each, a "Dissolution Event"):

(a) Expiration of Term. Upon the expiration of the Term set forth in *Section 1.6* of this Agreement.

(b) Determination of Members. The affirmative vote, consent or approval of the Majority Vote of Membership Shares to dissolve, wind up and liquidate the Company.

(f) **Judicially**. The entry of a decree of judicial dissolution under Section 53-643 of the Act.

Notwithstanding anything in Section 53-642 of the Act to the contrary, to the maximum extent permitted by law, the Dissolution Events specified in this *Section 14.1* are the exclusive events that may cause the Company to dissolve, and the Company shall not dissolve prior to the occurrence of a Dissolution Event.

14.2 Liquidation and Termination. Upon the happening of any of the Dissolution Events specified in *Section 14.1*, a Majority Vote of Membership Shares shall appoint a liquidator (the "Liquidator"), who may or may not be an agent or Representative of a Member. The Liquidator shall proceed diligently to wind up the affairs of the Company and make final Distributions as provided in this Agreement and in the Act. The costs of liquidation shall be borne as a Company expense; in addition, any Member who performs more than *de minimis* services in completing the winding up and termination of the Company pursuant to this *Article 14* shall be entitled to receive reasonable compensation for services performed. Until final Distribution, the Liquidator shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the Liquidator are as follows:

(g) **Accounting**. As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(h) **Notice**. The Liquidator shall cause the notice described in Section 53-648 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 53-648.

(i) **Winding Up, Liquidation and Distribution of Assets**. The Liquidator shall sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members and Assignees in kind) and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

(i) ***First***, payment of creditors, including Members and their Affiliates who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, other than liabilities for Distributions to Members;

(ii) ***Second***, to establish any Reserves that the Liquidator deems reasonably necessary for contingent or unforeseen obligations of the Company and, at the expiration of such period as the Liquidator shall deem advisable, the balance then remaining in the manner provided in subparagraph (iii) below;

(iii) ***Thereafter***, by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation), to the Members and Assignees in accordance with the positive balances in their Capital Accounts, after giving effect to all Capital Contributions, Distributions and allocations for all periods.

(j) **Purchase of Company Assets**. Except as provided in *Section 14.2* above, any Member shall have the right to bid on any sales of assets of the Company made pursuant to this *Article 14*.

14.4 Allocation of Net Profit and Loss in Liquidation. The allocation of Net Profit, Net Loss and other items of the Company following the date of dissolution, including but not limited to gain or loss upon the sale of all or substantially all of the Company's assets, shall be determined in accordance with the provisions of *Article 10* and shall be credited or charged to the Capital Accounts of the Members and Assignees in the same manner as Net Profit, Net Loss, and other items of the Company would have been credited or charged if there were no dissolution and liquidation.

14.5 No Obligation to Restore Negative Capital Account Balance on Liquidation. Notwithstanding anything seemingly to the contrary in this Agreement, upon a liquidation within the meaning of section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member or Assignee has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member or Assignee shall have no obligation to make any Capital Contribution to the Company, and the negative balance of such Person's Capital Account shall not be considered a debt owed by such Member or Assignee to the Company or to any other Person for any purpose whatsoever.

14.6 Articles of Dissolution. On completion of the distribution of Company assets as provided in this *Article 14*, the Company shall be deemed terminated, and the Liquidator (or such other Person or Persons as the Act may require or permit) shall file Articles of Dissolution with the Secretary of State of the State of Idaho, cancel any other filings made, and take such other actions as may be necessary to terminate the Company in accordance with the provisions of the Act.

14.7 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution of the Company, each Member and Assignee shall look solely to the assets of the Company for the return of its Capital Contributions. If the Company Property remaining after the payment or discharge of liabilities of the Company is insufficient to return the Capital Contributions of the Members and Assignees, no Member or Assignee shall have recourse against any other Member or Assignee.

14.8 No Action for Dissolution. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by *Section 14.1*. This Agreement has been drafted to provide fair treatment of all parties and equitable payment in liquidation of the Company. Accordingly, except for their duties to liquidate the Company as required by this *Article 14*, each Member hereby waives and renounces its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this *Section 14.8* shall be monetary damages only (and not specific performance), and the Damages may be offset against Distributions by the Company to which such Member would otherwise be entitled.

ARTICLE 15 - EXCULPATION AND INDEMNIFICATION

15.1 Definitions. For purposes of this *Article 15*, each of the following terms shall have the meaning ascribed to such term in this *Section 15.1*.

(a) Covered Person. The term "Covered Person" means and includes any of the following Persons: (i) any former, current or future Member or Assignee; (ii) any former, current or future Tax Matters Partner; (iii) any former, current or future Manager; or (iv) any former, current or future Officer, affiliate, trustee, trustor, beneficiary, member, manager, partner, shareholder, director, employee, representative, legal counsel or agent of the Company, any Affiliate of the Company or any of the Persons listed in clauses (i), (ii) or (iii).

(b) Proceeding. The term "Proceeding" means and includes any threatened, pending or completed demand, mediation, arbitration, suit, cause of action, action or other proceeding, whether civil, criminal, administrative or investigative in nature, to which a Covered Person is a party or in which a Covered Person is otherwise involved. Without limiting the generality of the foregoing, "Proceeding" shall expressly include: (i) any Proceeding brought by the Company against such Covered Person or brought in the right of the Company by any Person against such Covered Person; and (ii) any Proceeding brought to establish any right to exculpation or indemnification under this *Article 15*.

(c) **Claim**. The term "Claim" means and includes any claim, loss, damages, liability, loss, judgment, fine, settlement, compromise, award, cost, expense or other amount arising from or otherwise related to any Proceeding, including, without limitation, any attorneys' fees, costs and disbursements, expert witness fees or related costs incurred in such Proceeding and any costs or expenses incurred in connection or otherwise related to such Covered Person's establishment of a right to exculpation or indemnification in such Proceeding under this *Article 15*.

15.2 Exculpation. Notwithstanding any provision of this Agreement to the contrary, whether express or implied, or any obligation or duty at law or in equity, and except to the extent otherwise explicitly provided by any other agreement or by applicable law, no Covered Person shall be liable to the Company or to any other Person for any act or omission related to the Company and the conduct of its business, this Agreement, any related document, or any transaction or investment contemplated by this Agreement or any related document to the extent that: (a) such act was committed or such omission was made (i) in good faith by such Covered Person, and (ii) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of such Covered Person's authority, as granted pursuant to this Agreement; and (b) such act or omission did not constitute Disabling Conduct.

15.3 Indemnification. To the fullest extent permitted by applicable law, except as otherwise explicitly provided by any other agreement, the Company hereby indemnifies each Covered Person against and hereby agrees to defend and protect such Covered Person against and to hold such Covered Person free and harmless from any and all Claims arising from or otherwise related to such Covered Person's act or omission to the extent that (a) such act or omission was related to the Company or its business, this Agreement, any related document, or any transaction or investment contemplated by this Agreement or any related document; (b) such act was committed or such omission was made (i) in good faith by such Covered Person, and (ii) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of such Covered Person's authority, as granted pursuant to this Agreement; and (c) such act or omission did not constitute Disabling Conduct.

15.4 Limit on Indemnification. Notwithstanding *Section 15.3* hereof to the contrary, no Covered Person shall be entitled to indemnification under *Section 15.3* in any Proceeding to the extent that such Covered Person initiated the Proceeding, unless (a) the Proceeding was brought to enforce the Covered Person's rights to indemnification hereunder, or (b) the Members authorized, directed, consented to, approved or ratified the bringing of the Proceeding, by formal resolution or other action.

15.5 Advanced Expenses. Costs and expenses actually and reasonably incurred by a Covered Person in any Proceeding shall be paid by the Company in advance of final disposition of the Proceeding upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to exculpation under *Section 15.2* hereof and indemnification under *Section 15.3* hereof.

15.6 Tender of Defense. Any Covered Person may tender the defense of any Proceeding or make demand for exculpation or indemnification under this *Article 15* by providing Notice in accordance with this Agreement to the Manager and the Members. Upon any tender of defense, the Company shall appoint such legal counsel for the Covered Person as the Covered Person may reasonably approve and, subject to the terms, conditions and other provisions of this *Article 15*, shall pay all attorneys' fees and related costs incurred by the Covered Person to such legal counsel directly and in a timely manner.

15.7 No Presumption. The termination of any Proceeding by a judgment, decree, order, injunction, settlement, compromise, award, conviction or upon a plea of *nolo contendere* (or its equivalent) shall not, of itself, create a presumption that (a) a Covered Person did not act in good faith; or (b) that the Covered Person acted in a manner which (i) was not in the Company's best interests, (ii) was not within the scope of the Covered Person's authority, or (iii) the Covered Person did not reasonably believe to be in the Company's best interests within the scope of the Covered Person's authority as provided in this Agreement.

15.8 Successful Defense. To the extent that any Covered Person is successful on the merits in defense of any Proceeding, the Covered Person shall be deemed and considered entitled to exculpation under *Section 15.2* hereof and indemnification under *Section 15.3* hereof.

15.9 Standard of Conduct. The determination that any Covered Person has met or has not met the applicable standard of conduct required by *Section 15.2* or *Section 15.3* hereof may be made by a finding, judgment, order or decree of any court or other presiding authority in any Proceeding, whether upon application of the Company or of such Covered Person (regardless of whether the Company opposes such application).

15.10 Nonexclusive Remedy. The rights and remedies under this *Article 15* shall not be deemed or considered exclusive of or (in any way) diminish, limit, restrict, alter or otherwise adversely affect any other right to exculpation or to indemnification or to any other right or remedy available to any Covered Person under any agreement, any vote of the Members, any applicable law or otherwise, both with respect to acts or omissions in an official capacity and acts or omissions in a separate capacity while holding such official capacity.

15.11 Survival of Rights. The rights and remedies under this *Article 15* shall survive and continue for any Person which has ceased to be a Covered Person for any act committed or omission made while a Covered Person, and shall inure to the benefit of the successors and assigns, heirs, executors, and administrators of such Covered Person.

15.12 Amendments. Any repeal or modification of this *Article 15* shall not adversely affect any right or remedy of a Covered Person pursuant to this *Article 15*, including the right to indemnification or to the advancement of expenses of the Covered Person existing at the time of such repeal or modification with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE 16 - AMENDMENTS

16.1 Agreement May Be Modified. This Agreement may be modified as provided in this *Article 16* (as the same may, from time to time, be amended). No Member shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement in accordance with this *Article 16*.

16.2 Amendment or Modification of Agreement. This Agreement may be amended or modified from time to time only by a written instrument adopted by the Majority Vote of Membership Shares; *provided, however*, that any amendment that would change a required voting percentage for approval of any matter or a Member's voting rights or any amendment that would alter the interest of one or more Members in Net Profits, Net Losses, similar items or any Company Distributions shall require the affirmative vote of all Members then entitled to vote.

ARTICLE 17 - CONFIDENTIALITY

17.1 Treatment of Confidential Information. Each Member acknowledges that during the term of this Agreement, it may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, including, but not limited to, information concerning financial instruments, technical research data and literature, investment and trading models and techniques, records, and all other know-how, trade marks, trade secrets, business plans and methods, expansion plans, strategic plans, marketing plans, contracts, or other business documents which the Company treats as confidential and proprietary trade secrets (collectively "Confidential Information"). Each Member expressly agrees that all such Confidential Information is and shall remain the property of the Company; and no Member shall use such Confidential Information in any manner detrimental to the best interests of the Company, including but not limited to activities that are competitive with the Company, nor shall any such Confidential Information be disclosed to any third party without the express written consent of the Members. Upon expiration or other termination of a Member's interest in the Company, that Member may not take or use any of the Confidential Information belonging to the Company unless specifically authorized by this Agreement or otherwise agreed in writing by the Members, and that Member shall promptly return

to the Company all Confidential Information in that Member's possession or control.

17.2 Remedies. The parties hereto acknowledge and agree that a breach of the covenants or restrictions set forth in this *Article 17* will cause irreparable damage to the Company, the exact amount of which will be difficult to ascertain, and the remedies at law for any such breach will be inadequate. Accordingly, each Member agrees that if it breaches any such covenants or restrictions, then the Company shall be entitled to injunctive relief and any other available equitable or legal relief. The foregoing remedies shall be cumulative and non-exclusive, and in addition to any and all other remedies that may be available to the Company, and each Member hereby waives any security or bond requirement in connection with the Company or such other Member(s), as applicable, obtaining such injunctive or other equitable relief. The provisions of this *Article 17* shall survive the termination of this Agreement.

17.3 Applicability. For purposes of this *Article 17*, "Confidential Information" does not include information that: (a) is or becomes generally available to the public through no breach of this Agreement; (b) is already known to the receiving party at the time of disclosure, as evidenced in writing; (c) becomes known to the receiving party by disclosure from a third party who has a lawful right to disclose the information; or (d) is independently developed by employees or agents of the Receiving Party who the Receiving Party can demonstrate did not have access to Confidential Information.

ARTICLE 18 - DEFINITIONS

18.1 Definitions. For purposes of this Agreement, unless the context clearly indicates otherwise, capitalized terms used in this Agreement shall have the meanings given such terms below:

"Act" shall mean the Idaho Limited Liability Company Act, Idaho Code §§ 53 *et seq.*, and all amendments to the Act.

"Additional Member" shall mean a Member, other than an Initial Member or a Substitute Member, who has acquired a Membership Interest (including both Economic Rights and Management Rights) from the Company after the date of this Agreement, as shown on the books and records of the Company and on **Schedule 1** hereto.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) The Capital Account shall be increased by any amounts such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(b) The Capital Account shall be decreased by the items described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Affiliate" shall mean, with respect to any Person, any of the following: (a) any person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting interests of such Person: (c) any officer, director or manager of such Person; (d) any Person that is an officer, director, manager, trustee or holder of 10% or more of the voting interests of any Person described in clauses (a) through (c) of this definition. For purposes of this definition, the term "controls," "is controlled by" or "is under common control with" shall mean the possession, direct or indirect, of the

power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this Operating Agreement including all amendments adopted in accordance with this Agreement and the Act, and together with any exhibits, schedules, attachments or annexes hereto from time to time, as the context requires.

"Articles" shall mean the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State of Idaho.

"Assignee" shall mean an owner of Economic Rights who has not been admitted as a Substitute Member, including an owner of Economic Rights pursuant to a Transfer permitted under *Article 12* or an owner of Economic Rights of a Member whose membership in the Company has been terminated by reason of an Event of Dissociation.

"Bankruptcy" shall mean, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy.

"Business Day" shall mean any day other than Saturday, Sunday or a legal holiday observed in the State of Idaho.

"Capital Account" shall mean the account maintained for a Member or Assignee determined in accordance with *Article 10*.

"Capital Contribution" shall mean, with respect to any Member, the total amount of money or other Property contributed to the capital of the Company by such Member pursuant to *Article 9*.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provisions of succeeding law.

"Commitment" shall mean the obligation of a Member or Assignee to make a Capital Contribution.

"Company" shall mean **The Source Store, LLC**, an Idaho limited liability company formed under this Agreement, and any successor.

"Company Minimum Gain" shall mean the same as "partnership minimum gain" as set forth in section 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

"Company Property" shall mean any Property owned by the Company.

"Contributing Members" shall mean Members making Capital Contributions as a result of the failure of a Delinquent Member to perform a Commitment, as described in *Section 9.4*.

"Damages" shall mean any loss, damage, injury, reduced value, liability, claim, demand, settlement, judgment, award, fine, penalty, tax, fee (including any legal fees, costs and disbursements, expert fees, account fees or advisory fees), charge, cost (including any cost of investigation or enforcement costs) or expense of any nature, net of insurance recoveries.

"Default Interest Rate" shall mean the higher of the legal rate or the then-current prime rate quoted by U.S. Bank, N.A. in the jurisdiction of the Principal Office plus three percent (3%).

"Delinquent Member" shall mean a Member or Assignee who has failed to meet the Commitment

of that Member or Assignee.

"Disabling Conduct" shall mean any act or failure to act which (a) constitutes gross negligence, willful conduct or fraud, (b) is taken in bad faith, (c) involves a knowing violation of law, or (d) is done in reckless disregard of the duties involved in the conduct of one's position.

"Distribution" shall mean money or other Property, from any source, distributed to the Members and Assignees by the Company.

"Economic Rights" shall mean a Member's or Assignee's share of the Net Profits, Net Losses or any other items allocable to any period and Distributions of Company Property pursuant to the Act and this Agreement, but shall not include any Management Rights.

"Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association or any foreign trust or foreign business organization.

"Financing Event" shall mean a transaction or series of transactions whereby the Company or a successor entity to the Company undertakes or effects (i) an initial public offering of its equity securities under the Securities Act of 1933 Act, or (ii) a merger, consolidation, acquisition, sale of all or substantially all of its assets, or other similar business arrangement (including, without limitation the generality of the foregoing, any transaction in which the Members would be merged or consolidated with or into one or more other entities with the intention that such entity or entities undertake or effect an initial public offering of its or their equity securities, a subsequent merger, consolidation, acquisition, sale of all or substantially all of its or their assets, or other similar business arrangement) the principal intended and articulated purpose of which is to provide the Members and/or their respective equity owners with liquidity, whether through ownership of a publicly traded security or otherwise.

"Fiscal Year" shall mean (i) the period commencing on the date on which the Articles are filed with the Idaho Secretary of State and ending on December 31, 2003, (ii) any subsequent 12-month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clause (ii) for which the Company is required to allocate Net Profits, Net Losses or other items of Company income, gain, loss or deduction pursuant to *Article 10*.

"GAAP" shall mean U.S. generally accepted accounting principles in effect from time to time.

"Governmental Body" shall mean any (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or entity and any court or other tribunal).

"Immediate Family" shall mean a Member's spouse, children (including natural, adopted and stepchildren), and lineal ancestors or descendants.

"Initial Members" shall mean Hodge and Prehn.

"Interested Member" shall mean any Member that has more than a *de minimis* pecuniary interest in a matter submitted to the Members for a vote, other than any interest resulting from such Person's status as a Member.

"Involuntary Bankruptcy" shall mean, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or

any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person, which petition has not been dismissed within sixty (60) days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the property of such Person, which order has not been dismissed within sixty (60) days.

"Manager" means the person elected as the Manager of the Company from time to time in accordance with the provisions of *Section 6.7*. The Manager need not be a Member of the Company.

"Majority Vote of Membership Shares" shall mean Member or Members having Membership Shares in excess of one-half of the total number of issued and outstanding Membership Shares of all the Members entitled to vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority Vote of Membership Shares.

"Majority Vote of the Remaining Membership Shares" shall mean Member or Members having Membership Shares in excess of one-half of the total number of Membership Shares of all the Members entitled to vote on, consent to, or approve a particular matter, *excluding* any Interested Member(s). Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority Vote of the Remaining Membership Shares. A Member who has Transferred that Member's entire Membership Interest to an Assignee, but has not ceased to be a Member as provided herein, shall be considered a Member for the purpose of determining a Majority Vote of the Remaining Membership Shares.

"Management Right" shall mean the right to exercise management control over the Company, including the rights to information and to consent or approve actions of the Company.

"Member" shall mean an Initial Member, Substitute Member or Additional Member, including, unless the context expressly indicates to the contrary, an Assignee.

"Membership Interest" shall mean the entire ownership interest of a Member in the Company at a particular time, including a Member's Economic Rights, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to company with the terms and provisions of this Agreement.

"Membership Share" shall mean a portion of a Membership Interest in the Company held by a Member hereof, including any and all benefits to which the holder of such Membership Share may be entitled as provided in this Agreement, and all obligations of the holder of such Membership Share to comply with the terms and provisions of this Agreement.

"Net Cash from Operations" shall mean with respect to any fiscal period, all cash receipts received by the Company from operations in the ordinary course of business, including, without limitation, income from invested Reserves, but after deducting Operating Cash Expenses, debt service and any other payments made in connection with any loan to the Company or other loan secured by a lien on Company assets, capital expenditures of the Company, and amounts set aside for the creation of additional Reserves. Net Cash from Operations does not include Capital Contributions or the proceeds of any borrowings by the Company.

"Net Loss" means the net loss generated by the Company with respect to a Fiscal Year, as determined for Federal income tax purposes; *provided*, that such loss shall be decreased by the amount of all income during such period that is exempt from Federal income tax and increased by the amount of all expenditures during such period that are not deductible for Federal income tax purposes and that do not constitute capital expenditures.

"Net Profit" means the net income generated by the Company with respect to a Fiscal Year, as

determined for Federal income tax purposes; *provided*, that such income shall be increased by the amount of all income during such period that is exempt from Federal income tax and decreased by the amount of all expenditures during such period that are not deductible for Federal income tax purposes and that do not constitute capital expenditures.

"Nonrecourse Deductions" shall have the meaning set forth in section 1.704-2(b)(1) of the Regulations.

"Operating Cash Expenses" shall mean with respect to any fiscal period, the amount of cash disbursed in the ordinary course of operations of the Company during such period, including, without limitation, all cash expenses, such as insurance premiums, taxes, repair and maintenance expenses, and legal and accounting fees. Operating Cash Expenses shall not include expenditures paid out of Reserves.

"Organization Expenses" shall mean those expenses incurred in the organization of the Company including the costs of preparation of this Agreement and Articles, and as defined for purposes of section 709(a) of the Code.

"Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of each such Person where the context so permits.

"Principal Office" shall mean **1800 Broadway Avenue, Boise, Idaho 83706**, or such other principal office of the Company as determined by the Members pursuant to *Section 1.4* hereof.

"Property" shall mean any property, real or personal, tangible or intangible (including goodwill), including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Regulations" shall mean, except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the U.S. Department of the Treasury under the Code, as such regulations may be lawfully changed from time to time.

"Representatives" shall mean a Person's officers, directors, employees, managers, trustees, agents, attorneys, accountants, advisors and representatives.

"Reserves" shall mean with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which may be maintained by the Company for working capital and to pay taxes, or other costs or expenses of the Company.

"Sharing Ratio" shall mean with respect to any Member or Assignee, a fraction (expressed as a percentage), the *numerator* of which is the total of the Member's or Assignee's Membership Shares and the *denominator* is the total of all Membership Shares of all Members and Assignees as such totals exist from time to time.

"Subscription Agreement" shall mean the Agreement between an Additional Member and the Company described in *Section 13.2* of the Agreement.

"Substitute Member" shall mean an Assignee who has been admitted to all of the rights of membership pursuant to this Agreement.

"Transfer" shall mean with respect to any Membership Interest in the Company, or part thereof, as a noun, any voluntary or involuntary assignment, sale or other transfer or disposition of such Membership Interest or part thereof (which shall include, without limitation and notwithstanding any provision of the Act otherwise to the contrary, a pledge, or the granting of a security interest, lien or other encumbrance in or against, any Membership

Interest in the Company, or part thereof) and, as a verb, voluntarily or involuntarily to assign, sell or otherwise transfer or dispose of such Membership Interest or part thereof.

"Voluntary Bankruptcy" shall mean, with respect to any Person, the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property; or corporate action taken by such Person to authorize any of the foregoing.

18.2 Other Defined Terms. The following terms shall have the meanings defined for such terms in the Sections set forth below:

Term	Section
"Annual Budget"	3.4
"Claim"	15.1(c)
"Company Exercise Notice"	12.4(c)
"Company Exercise Period"	12.4(c)
"Confidential Information"	17.1
"Contributing Member"	9.4
"Covered Person"	15.1(a)
"Delinquent Member"	9.4
"Dissolution Event"	14.1
"Event of Dissociation"	13.6
"Exercise Notice"	12.4(c)
"Interest"	12.1
"Liquidator"	14.2
"Member Exercise Notice"	12.4(c)
"Member Exercise Period"	12.4(c)
"Membership Share Certificates"	5.4
"1933 Act"	5.5
"Notice"	20.8
"Pass-Thru Partner"	3.8
"Permitted Transfer"	12.2(a)
"Prime Rate"	9.5
"Proceeding"	15.1(c)
"Regulatory Allocations"	10.2(c)
"Remaining Members"	12.4(c)
"Right of First Refusal"	12.4(a)
"Secretary of State"	1.1
"Target Interest"	12.4(b)
"Tax Matters Partner"	3.8
"Term"	1.6
"Transfer Notice"	12.4(b)
"Transferor"	12.1

18.3 Construction. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter. Except as otherwise provided in this Agreement, all references to Articles and Sections refer to Articles and Sections of this Agreement, and all references to Schedules are to Schedules attached to this Agreement, each of which is incorporated in and made a part of this Agreement for all purposes.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 Scope. The procedures provided by this *Article 19* shall apply to any dispute which arises between the Members with respect to the negotiation, execution, performance, interpretation or termination of this Agreement, *provided, however*, that the terms of this Article shall not apply unless and until a Member shall have given written notice to the other invoking this *Article 19*. Such notice shall specify in reasonable detail the dispute to which it is intended to apply. Such dispute is hereinafter referred to as the "Noticed Dispute;" and the effective date of delivery of such notice is referred to as the "Notice Date."

19.2 Stay of Litigation; Tolling. Upon notice given pursuant to *Section 19.1*, the Members and the Company shall refrain from commencing litigation against the other or any of such other's Affiliates in respect of the Noticed Dispute, and each of them shall suspend prosecution or defense of any already pending litigation arising out of the Noticed Dispute. Such stay shall remain in effect until the earlier of (i) three(3) months after the Notice Date, (ii) completion of the dispute resolution process without settlement of the Noticed Dispute, or (iii) written agreement by the parties to discontinue the dispute resolution process. If any litigation is pending at the time of the Notice Date, the parties shall each take appropriate steps, including all necessary filings with the court having jurisdiction over such litigation, to suspend such litigation for the period of the stay provided for in this *Section 19.2*. Notwithstanding the foregoing, the stay of litigation provided for in this *Section 19.2* shall not apply to:

(a) Any litigation efforts pursued by either party to avoid irreparable injury arising from the Noticed Dispute and the defense thereof by the other party;

(b) Any litigation efforts made in connection with litigation which is pending on the Notice Date which are necessary to meet court-imposed schedules which the court is unwilling to stay or delay pursuant to this Section (following request therefor by the parties) pending the parties' efforts to resolve the Noticed Dispute; and

(c) Any litigation efforts that are necessary, in the opinion of counse, for either party to protect the interests in such litigation

In the event litigation is not stayed pursuant to the provisions of any of the preceding subparagraphs (a), (b) or (c), the parties shall nonetheless use the dispute resolution process provided for herein in an effort to resolve the Noticed Dispute or so much thereof as may be practical to resolve, given the claims and positions of third parties. Such action shall be taken while simultaneously continuing the litigation.

During the prendency of the stay of litigation provided for in this *Section 19.2*, all statutes of limitations which may be applicable to the Noticed Dispute shall be tolled as between or among the parties and their respective Affiliates.

19.3 Negotiation. Within ten (10) days after the Notice Date, each Member involved in the dispute shall deliver to the other Members so involved a written statement of its position with respect to the Noticed Dispute. Within fifteen (15) days after the Notice Date, all Members involved in the dispute and the Manager shall meet and conduct good faith discussions and negotiations in an attempt to resolve the Noticed Dispute in an amicable and cooperative manner. If the parties are unable to settle the Noticed Dispute by the 30th day following the Notice Date, they shall mutually appoint a neutral third-party mediator. If the parties are unable to agree upon the neutral third-

party mediator by the 30th day following the Notice Date, each Member involved in the dispute shall appoint one neutral mediator, and the appointed mediators shall then appoint a third neutral mediator who shall attempt to mediate the dispute in accordance with *Section 19.4* below.

19.4 Mediation. Within fifteen (15) days after appointment of the mediator, each party shall submit a written statement to the mediator and to the other Member(s) involved in the dispute, and each party may, within ten (10) days after receipt of the other party's statement, submit to the mediator and the opposing party or parties, one rebuttal statement. Within twenty (20) days after submission of the rebuttal statements, on a date and at a place in Boise, Idaho set by the mediator, the parties in dispute shall meet with the mediator to negotiate and resolve the Noticed Dispute. If the parties are unable to reach a settlement of the Noticed Dispute, the mediator shall, within fifteen (15) days thereafter, deliver in writing to each party a recommended settlement of the Noticed Dispute. Within five (5) days after receipt of the mediator's recommendation, the parties shall meet at a time and place in Boise, Idaho set by the mediator and make a final attempt to resolve the Noticed Dispute. If they are unable to do so, the dispute resolution process shall be deemed terminated, and any stay of litigation shall also terminate.

19.5 Fees and Expenses. The parties shall each cover their own costs and fees associated with the dispute resolution process provided for in this Agreement. The fees and expenses of the neutral mediator(s) shall be divided equally by the parties.

19.6 Scope of Obligation; Specific Performance. The parties agree to use the settlement procedures outlined above in a good faith effort to provide for a speedy and economical means of resolving disputes. However, the parties agree that no party shall be in default or in breach hereof for failure to adhere to any of the procedures outlined above, *except that*: (i) compliance with the procedures hereof shall be a condition precedent to any party exercising its rights under *Section 19.7* below, and (ii) any party may obtain an order of specific performance in respect of the other part(ies)' obligation under *Section 19.2*. In addition, nothing herein shall be construed to require any party to agree to any particular settlement of a dispute. It is the intention of the parties that this Agreement be purely procedural in nature. Its purpose is to ensure that the possibilities of settlement are fully explored by the parties with the aid of a neutral mediator before either party resorts to or continues the prosecution of litigation.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

20.1 Entire Agreement. This Agreement, together with all schedules attached hereto from time to time, represents the entire agreement among all the Members and between the Members and the Company relating to the subject matter hereof, and supersedes all prior contracts, agreements and understandings among them. No course of prior dealings among the Members shall be relevant to supplement or explain any term used in this Agreement.

20.2 Rights of Creditors and Third Parties. This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their successors and permitted assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement, any Subscription Agreement, or any other agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

20.3 Headings. The boldface headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

20.4 Additional Documents. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions or intentions of this Agreement.

20.5 Successors; Counterparts. Subject to *Articles 12* and *13*, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors and permitted assigns, or nominees or representatives, of the Members and (b) may be executed in several counterparts, with the same effect as if the parties executing the several counterparts had all executed one and the same agreement.

20.6 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Idaho (without giving effect to conflicts of laws principles).

20.7 Waiver.

(a) No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

20.8 Notices. Except as otherwise provided in this Agreement, all notices, requests and other communications to any Member or Assignee (each, a "Notice") shall be in writing (including telecopier or similar writing) and shall be given to such Member (and any other Person designated by such Member) at its address or telecopier number set forth in the Membership Registry of the Company or such other address or telecopier number as such Member may hereafter specify for the purpose of notice. Each such Notice shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this *Section 20.8* and the appropriate confirmation is received, (b) if given by mail, when deposited in the United States mail, addressed to the Member, with postage prepaid, or (c) if given by any other means, when delivered at the address specified pursuant to this *Section 20.8*.

20.9 Waiver of Partition. Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain an action for partition of the Company's Property.

20.10 Survival. All indemnities and reimbursement obligations made pursuant to this Agreement shall survive dissolution and liquidation of the Company until the expiration of the longest applicable statute of limitations (including extensions and waivers) with respect to the matter for which a party would be entitled to be indemnified or reimbursed, as the case may be.

20.11 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected, and shall continue to be valid and enforceable to the fullest extent permitted by law.

20.12 Counsel. The Members ratify the Company's retention of Hoagland, Dominick & Hicks, Attorneys At Law, PLLC (which is representing the Company, and not any Member) in connection with the formation and organization of the Company. The Members have been given the opportunity to retain other counsel to represent their separate individual interests in connection with such matter.

IN WITNESS WHEREOF, the Members have signed this Operating Agreement of **The Source Store, LLC**, effective as of the date first set forth above.

INITIAL MEMBERS:

Michael L. Hodge II	Donnelly Prehn

Schedule 1

THE SOURCE STORE, LLC

MEMBER REGISTRY

Name of Member	Capital Contribution	Membership Shares	Sharing Ratio
Michael L. Hodge II	$33,000 (1)	85,000 (2)	85.0%
Donnelly Prehn	$10,000 (1)	15,000 (2)	15.0%

(1) The initial Capital Contribution of Mr. Hodge was in the form of a contribution of the assets of "The Source," a sole proprietorship of which Mr. Hodges was the owner; the Members agree that Mr. Hodge's Capital Account will be credited with the fair value of such assets, as set forth above. Mr. Prehn's initial Capital Contribution was in the form of partial conversion of a note with the Company.

Schedule 2

THE SOURCE STORE, LLC

OFFICERS

Name	Office
Michael L. Hodge II	President and Chief Executive Officer
Michael L. Hodge II	Secretary

EXHIBIT B

THE SOURCE STORE, LLC
NON-COMPETE AGREEMENT

This Non-Compete Agreement (this "*Agreement*") is made and entered into as of the 12TH day of May, 2003, by and between Michael L. Hodge II ("*Hodge*") and The Source Store, LLC, an Idaho limited liability company (the "*Company*").

Hodge is a founder of the Company, and currently serves as its Managing Member. In consideration of Hodge's continued relationship with the Company, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Customer Non-Solicitation and Non-Competition. Hodge shall not, during the term of his employment with and/or ownership of, the Company and for two (2) years following the voluntary or involuntary termination of such employment and/or ownership for any reason directly or indirectly solicit, divert, take away, or attempt to solicit, divert or take away, any of the Company's customers or the business or patronage of any such customers (either on Hodge's own behalf or on behalf of any other person, partnership, corporation or other entity).

2. Employee Non-Solicitation. Hodge shall not, during the term of employment with and/or ownership of the Company and for two (2) years following termination of such employment and/or ownership for any reason, directly or indirectly solicit, recruit or hire any other employee of the Company (either on Hodge's own behalf or on behalf of any other person, partnership, corporation or other entity).

3. Enforcement.

A. Reasonableness of Restrictions. Hodge acknowledges that compliance with this Agreement is reasonable and necessary to protect the Company's legitimate business interests, including but not limited to the Company's goodwill.

B. Irreparable Harm. Hodge acknowledges that a breach of any of Hodge's obligations under this Agreement will result in great, irreparable and continuing harm and damage to the Company for which there is no adequate remedy at law.

C. Injunctive Relief. Hodge agrees that in the event Hodge breaches this Agreement, the Company shall be entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief to enforce the terms of this Agreement, in addition to any and all monetary damages allowed by law, against Hodge.

D. Extension of Covenants. In the event Hodge violates any one or more of the covenants contained in *Sections 2* or *3* of this Agreement, Hodge agrees that the running of the term of each covenant so violated shall be tolled during the period(s) of any such violation and the pendency of any litigation arising out of any such violation.

E. Judicial Modification. The parties have attempted to limit Hodge's ability to compete only to the extent necessary to protect Company from unfair business practices and/or unfair competition, including without limitation, loss of customers or good will, and

raiding or loss of employees. The parties recognize, however, that reasonable people may differ in making such a determination. Consequently, the parties hereby agree that, if the scope or enforceability of any restrictive covenant is in any way disputed at any time, a court or other trier of fact may modify and enforce the covenant to the extent that it believes to be reasonable under the circumstances existing at that time. The parties intend that each of the covenants be deemed to be a series of separate covenants, one for each and every county of each and every state of the United States, and one for each and every political subdivision of each and every other country where the covenants shall be effective.

F. Attorneys' Fees. In any suit or action arising out of or relating to this Agreement, whether sounding in contract, tort or otherwise, the prevailing party shall be entitled to recover said party's expenses (including, without limitation, reasonable attorneys' fees, litigation costs, court costs and amounts paid in investigation, defense or settlement of any claims, and whether or not incurred at the trial, appellate or administrative levels) from the nonprevailing party.

4. Not a Contract for Employment. Hodge acknowledges and understands that this Agreement is not a contract of employment, and nothing herein shall guaranty Hodge's continued employment with, service to or ownership of, the Company.

5. Miscellaneous.

A. Survival. Hodge understands that this Agreement shall be effective as of the date first written above and that the terms of this Agreement shall remain in full force and effect not only during the continuation of Hodge's employment with and/or ownership of the Company, but also after the termination of employment or ownership for any reason by the Company or Hodge.

B. Waiver. Failure of the Company to exercise or otherwise act with respect to any of its rights under this Agreement shall not be construed as a waiver of any breach, nor prevent the Company from thereafter enforcing strict compliance with any and all terms of this Agreement.

C. Severability. If any part of this Agreement shall be adjudicated to be invalid or unenforceable, as to duration, territory or otherwise, then such part shall be deemed deleted from this Agreement or amended, as the case may be, in order to render the remainder of this Agreement valid and enforceable.

D. Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the Company, the Company's successors and assigns, Hodge and Hodge's heirs, executors, administrators and legal representatives.

E. Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of Idaho, without regard to its conflict of laws rules. Hodge hereby consents and submits to the exclusive jurisdiction of the courts of the State of Idaho and the U.S. District Court for the District of Idaho with respect to any actions or causes of action arising hereunder and agrees that Boise, Idaho shall be the

exclusive venue of any actions or causes of action arising hereunder (unless injunctive relief is sought and, in Company's judgment, may not be effective unless obtained in some other venue).

F. Titles and Captions. All section and paragraph titles and captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the construction or interpretation of this Agreement.

G. Entire Agreement. This Agreement contains all of the understandings and agreements between the parties concerning matters set forth in this Agreement. The terms of this Agreement supersede any and all prior statements, representations and agreements by or between the Company and Hodge, or either of them, concerning the matters set forth in this Agreement. Hodge acknowledges that no person who is an agent or employee of the Company may orally or by conduct modify, delete, vary, or contradict the terms or conditions of this Agreement or this paragraph. This Agreement may be modified only by a written agreement signed by both parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have signed this Non-Compete Agreement as of the day and year first set forth above.

The Source Store, LLC

By: M. Hodge II
Name: Michael L. Hodge
Title: MANAGER

M. Hodge II
Michael L. Hodge II

EXHIBIT C

251

CERTIFICATE OF ORGANIZATION
LIMITED LIABILITY COMPANY

FILED EFFECTIVE
2012 APR 16 AM 5:05
SECRETARY OF STATE
STATE OF IDAHO

(Instructions on back of application)

1. The name of the limited liability company is:

THE SOURCE LLC

2. The complete street and mailing addresses of the initial designated office:

3637 N. LAKE HARBOR LANE BOISE ID 83703
(Street Address)

(Mailing Address, if different than street address)

3. The name and complete street address of the registered agent:

MICHAEL L HODGE
(Name)

(Street Address)
3429 N CLOVERDALE RD BOISE ID 83713

4. The name and address of at least one member or manager of the limited liability company:

Name	Address
MICHAEL L. HODGE	3429 N. CLOVERDALE RD BOISE ID 83713
GEORGE M. BROWN	11974 JOY DR BOISE ID 83713
Desiree CLAIBORNE	5304 N 43RD DR GLENDALE AZ 85301

5. Mailing address for future correspondence (annual report notices):

3637 N. LAKE HARBOR LANE BOISE ID 83703

6. Future effective date of filing (optional): _____

Signature of a manager, member or authorized person.

Signature _____
Typed Name: GEORGE BROWN

Signature _____
Typed Name: _____

Secretary of State use only

IDAHO SECRETARY OF STATE
04/17/2012 05:00
CK: 965267 CT: 172099 BH: 1320855
1 @ 100.00 = 100.00 ORGAN LLC # 2
1 @ 20.00 = 20.00 EXPEDITE C # 3

W113013

cert_org_llc Rev. 07/2010

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

ORDER RE: DISSOLUTION OF THE SOURCE STORE, LLC AND RELATED MATTERS

The Court, having received the Application for Temporary Restraining Order and Motion for Preliminary Injunction, Memorandum in Support of Application for Temporary Restraining Order and Motion for Preliminary Injunction, the First and Second Affidavits of Donnelly Prehn in Support of Application for Temporary Restraining Order and the Affidavit of Counsel in Support of Application for Temporary Restraining Order, each as filed by the plaintiffs Donnelly Prehn ("Prehn") and Dwight Bandak (collectively, the "Plaintiffs"); this matter and such application having come before the Court for hearing on May 8, 2012, at 9:00 a.m.; Prehn, appearing in person and accompanied by his counsel, Michael O. Roe and Mr. Roe

ORIGINAL

having also appeared for Plaintiff Bandak; the defendants, The Source, LLC ("Source 2"), Michael L. Hodge II ("Hodge") and George M. Brown ("Brown"), appearing in person and accompanied by their counsel, Edward J. Guerricabeitia, and based on Mr. Guerricabeitia's representation that he also represents defendant Christopher Claiborne, who was not present in person (collectively with Source 2, Hodge and Brown, the "Hodge Defendants"); The Source Store, LLC ("Source 1"), the defendant entity which is the subject of the dissolution at issue in this matter and currently unrepresented, which did not appear at the hearing; and the parties having stipulated, orally, on the record to the matters set forth below;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The dissolution and winding up of Source 1 (the "Dissolution") shall be completed as soon as is reasonably practicable, with the participation and cooperation of all parties, in a manner which is fully transparent, accountable, fair and equitable to all members of Source 1 and with a view to discharging all legitimate debts and other obligations of Source 1 and maximizing the return and final distribution of all remaining funds to all Source 1 members.

2. The parties stipulate and agree that there are approximately $900,000.00 in open purchase orders from Source 1 customers in various stages of processing, which are assets of Source 1 (the "Existing Purchase Orders"). As part of the Dissolution, the Existing Purchase Orders shall be processed by Source 1, using Source 1 offices, equipment and personnel, in a manner consistent with the parameters set forth in paragraph 1 above.

3. ~~The parties further~~ stipulate and agree that, in addition to ~~the Existing~~ Purchase Orders, Source 1 is the rightful ~~owner of tangible~~ personal property assets, as set forth on that certain ~~2011 Federal~~ Summary Depreciation Schedule, dated December 31, 2011, ~~and previously circulated to the parties by Hodge (the "Assets"). As part of the Dissolution,~~ the

Assets shall be sold by Source 1, pursuant to an open auction process whereby any bidder, including without limitation any Plaintiff or the Hodge Defendants, can make successive bids by e-mail on one or more such Assets through close of business on May 17, 2012 and all such bids shall be immediately disclosed to and reviewed by any such bidder or party. Any bidder, including each party, shall then by e-mail notice to Source 1 have the right to request a "live auction" to be conducted in person and/or by telephone conference on May 18, 2012, to allow such bidders to hear competing bids and, if any such bidder elects, to offer higher bids, which process will produce the highest prices for the Assets and maximum return to all Source 1 members. Because some or all of the Assets will be necessary for Source 1 to complete the processing of the Existing Purchase Orders, the Assets shall be sold with the stipulation that such Assets will not be delivered to the buyer until all of the Existing Purchase Orders have been processed. Each party shall have full, complete and open access to such Assets and all of the records or other documents relating to such Assets immediately, in order to assist such party in formulating its bid(s). The bidding shall conclude at the close of business on May 18, 2012, and the Assets shall be awarded to the highest bidder, effective upon cash payment to Source 1 on or before close of business on May 22, 2012. deleted per stipulation PO

4. The parties further stipulate and agree that it is in the best interests of Source 1 and its members that, during and pursuant to the Dissolution, the overhead and other expenses of Source 1 be reduced to the absolute minimum necessary to complete the Dissolution, including without limitation the processing of the Existing Purchase Orders and the sale of the Assets, in order to maximize the return and final distribution of funds to all Source 1 members. Defendant Hodge will generate a proposed budget for the completion of the Dissolution and circulate it to all the parties as soon as possible. Defendant Hodge will identify those persons

necessary to complete the processing of the Existing Purchase Orders with the understanding and purpose of reducing the overhead and expense to the absolute minimum necessary to complete the Dissolution.

5. All funds, amounts, credits, offsets and other monies properly paid to, payable or accrued to or actually received by Source 1, including without limitation in connection with the Dissolution, processing of the Existing Purchase Orders, the sale of the Assets or otherwise, shall be deposited in the Source 1 operating account no. 0102010790 at Syringa Bank in Boise, Idaho (the "Dissolution Account"). Once the Dissolution is complete with the receipt and collection of the funds for the open auction of the Assets and processing of the Existing Purchase Orders, Defendant Hodge will provide to all parties a full and complete accounting reflecting the monies received and the expenses paid during the Dissolution process. The parties acknowledge and agree that Defendant Hodge has already provided to all parties a number of business records for the first quarter of 2012, including but not limited to Customer Lists, Existing Purchase Orders for domestic and international projects, Inventory List of Company Assets, and other business records No checks shall be written on and no funds shall be withdrawn from the Dissolution Account; provided, however, that bona fide and legitimate costs and expenses of Source 1 arising from the Dissolution and consistent with the parameters set forth in paragraphs 1 and 4 may be paid from the Dissolution Account. In addition, 2011 profits in the amount of $65,000.00 may be distributed to all Members of Source 1, but no other distributions, including profits from processing of the Open Purchase Orders, shall be made until this litigation is complete, the parties all agree or as otherwise ordered by the Court.

6. The parties have stipulated and agreed that both Prehn and Hodge have been and are currently bound by their respective Non-Compete Agreements, as attached as

Exhibit B to the Affidavit of Donnelly Prehn in Support of Application for Temporary Restraining Order, dated and filed with the Court in this matter on May 3, 2012. Accordingly, Prehn and Hodge shall continue to be bound by and comply with such Non-Compete Agreements, according to their terms and conditions, until May 18, 2012, at which time each party, including Prehn and Hodge, shall be released from all future obligation to comply with such agreements not to compete and released from all obligations of confidentiality to or in connection with Source 1.

7. Each party shall have full, complete, open and immediate access to all of the books and records of Source 1. Plaintiffs shall specifically request, through their counsel, the books and records they wish to review.

8. No party shall divert, employ or otherwise use any Source 1 asset, including without limitation the Assets or Source 1 employees, to or for the benefit of Source 2 or any other person or entity.

9. The parties stipulate and agree that certain disputes among the parties remain, including without limitation as to those matters set forth in the First Claim for Relief in the First Amended Complaint, dated and filed with the Court in this matter on April 27, 2012. Accordingly, nothing contained herein or in the parties' stipulation shall be deemed to have waived any such claims or any other claims of the parties, whether set forth in such First Amended Complaint, in any Counterclaim or in any Cross Claim.

10. This Order shall be binding on each of the parties to this litigation, including without limitation Source 1 and Source 2.

DATED this 17 day of May, 2012.

By Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of May, 2012, I caused a true and correct copy of the foregoing **ORDER RE: DISSOLUTION OF THE SOURCE STORE, LLC AND RELATED MATTERS** to be served by the method indicated below, and addressed to the following:

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Matthew J. McGee
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Deputy Clerk

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

SECOND AMENDED COMPLAINT

ORIGINAL

VA

COME NOW the plaintiffs, Donnelly Prehn and Dwight Bandak, and for a cause of action against the defendants, The Source Store, LLC, Michael L. Hodge II, George M. Brown, Christopher Claiborne, and The Source, LLC, complain and allege as follows:

PARTIES

1. Plaintiff Donnelly Prehn ("Prehn") is an individual residing in Ada County, Idaho.

2. Plaintiff Dwight Bandak ("Bandak") is an individual residing in Ada County, Idaho.

3. Defendant The Source Store, LLC ("Source 1") is an Idaho limited liability company with its principal place of business in Ada County, Idaho.

4. Defendant Michael L. Hodge II ("Hodge") is an individual residing in Ada County, Idaho.

5. Defendant George M. Brown ("Brown") is an individual residing in Ada County, Idaho.

6. Defendant Christopher Claiborne ("Claiborne") is an individual residing in Los Angeles County, California.

7. Defendant The Source, LLC ("Source 2") is an Idaho limited liability company with its principal place of business in Ada County, Idaho.

8. Prehn, Bandak, Hodge, Brown and Claiborne are members of Source 1.

9. Hodge, Brown, and Claiborne's wife, Desiree Claiborne, are members of Source 2.

JURISDICTION AND VENUE

10. This is an action for preliminary and permanent injunctive relief pursuant to Rule 65 of the Idaho Rules of Civil Procedure; and an action for monetary damages in excess of the $10,000.00 jurisdictional requirement of this Court.

11. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code Section 1-705.

12. Pursuant to Idaho Code Section 5-514(a) and (b), this Court has personal jurisdiction over each of the defendants in this action, because the defendants have transacted business within the State of Idaho.

13. Venue of this action properly lies in Ada County, Idaho, pursuant to Idaho Code Section 5-404, because most of the defendants reside in and maintain their principal place of business in such county.

GENERAL ALLEGATIONS

Formation, Membership, and the Governing Agreements

14. The plaintiffs reallege paragraphs 1 through 13 above as though set forth in full.

15. Source 1 markets, develops, designs and produces merchandise and apparel for customers' promotional and marketing purposes. On June 21, 2002, Source 1 filed its Articles of Organization with the Idaho Secretary of State. Source 1 is a manager-managed limited liability company and at all times relevant to this action Hodge was, and remains, the sole manager of Source 1.

16. Prehn and Hodge were Source 1's founding members. On April 1, 2003, Prehn and Hodge executed the Operating Agreement of The Source Store, LLC (the "Operating

Agreement"), a complete and accurate, but unsigned, copy of which is attached hereto as Exhibit A.

17. On April 22, 2004, Claiborne and Bandak acquired membership shares in Source 1 and became members of Source 1 in accordance with the provisions of the Operating Agreement.

18. On December 31, 2006, Brown acquired membership shares in Source 1 and became a member of Source 1 in accordance with the provisions of the Operating Agreement.

19. Each member of Source 1 agreed to the terms and conditions of the Operating Agreement, and all amendments thereto.

20. Section 1.2 of the Operating Agreement provides that the business of Source 1 is to be conducted under such name or any other variation of such name, and specifically refers to operation of Source 1 under the name "The Source."

21. Section 2.2 of the Operating Agreement provides that no real, personal or other property of Source 1, including trade secrets and intellectual property, shall be deemed to be owned by any member individually. Such property and assets are owned and controlled exclusively by Source 1.

22. On or about May 12, 2003, and in compliance with Section 2.3 of the Operating Agreement, Hodge executed The Source Store, LLC Non-Compete Agreement (the "Non-Compete Agreement"), a copy of which is attached hereto as Exhibit B. The Non-Compete Agreement provides, in pertinent part, that while working for Source 1, Hodge shall not divert any Source 1 customers or employees on his own behalf, or on behalf of any other entity. Prehn executed a similar agreement.

23. Article 17 of the Operating Agreement governs the confidentiality of certain business records, information, knowledge, and trade secrets of Source 1. Specifically, Section 17.1 provides as follows:

> Each Member acknowledges that during the term of this Agreement, it may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, including, but not limited to, information concerning financial instruments, technical research data and literature, investment and trading models and techniques, records, and all other know-how, trade marks, trade secrets, business plans and methods, expansion plans, strategic plans, marketing plans, contracts, or other business documents which the Company treats as confidential and proprietary trade secrets (collectively "Confidential Information"). Each member expressly agrees that all such Confidential Information is and shall remain the property of the Company; and no Member shall use such Confidential Information in any manner detrimental to the best interests of the Company, including but not limited to activities that are competitive with the Company, nor shall any such Confidential Information be disclosed to any third party without the express written consent of the Members.

24. Section 9.5 of the Operating Agreement provides that members of Source 1 may advance funds to Source 1 as loans subject to repayment in the event Source 1 does not have sufficient cash to pay its obligations.

25. Article 14 of the Operating Agreement governs dissolution of Source 1. It provides that a liquidator should be appointed to liquidate all of Source 1's assets, and that until final distribution, the liquidator shall continue to operate Source 1. It also provides that, in the event of dissolution and liquidation, the payment of creditors, including member creditors, is the first priority. Finally, Article 14 provides that any member shall have the right to bid on any sales of assets of Source 1.

Development of The Source as a Viable Business

26. After organizing and founding Source 1 in 2002, Hodge and Prehn both worked full time at Source 1. Prehn worked full time at Source 1 through 2010, and Hodge worked full time at Source 1 until 2012.

27. Hodge and Prehn struggled to build the Source 1 brand and business and, between 2002 and 2005, Source 1 often did not have the ability to pay its obligations. In consideration of the tight budget and limited liquidity of Source 1, and upon the understanding that Prehn was unwilling to work full time at Source 1 without receiving compensation beyond his interest in Source 1, Prehn, Hodge and Source 1 agreed that Prehn would forego collection of a salary while the business grew. Prehn, Hodge and Source 1 agreed that Prehn would accrue back salary interest-free at a rate of 75% of the salary actually collected by Hodge from July 2002 through December 2004, and then accrue 100% of the salary actually collected by Hodge during the calendar year of 2005 (the "Back Salary"). Hodge also agreed to personally guarantee payment of 35% of the Back Salary. Prehn, Hodge and Source 1 tracked the Back Salary, and Prehn did not collect any salary from Source 1 until January 2006. The Back Salary owed to Prehn is $68,750.00.

28. From 2002 to 2007, Prehn also made numerous advances to Source 1 (collectively, the "Prehn Loan") to ensure that Source 1 could meet its financial obligations and survive. Prehn, Hodge and Source 1 agreed that Source 1 would pay back the Prehn Loan, and that such payment would occur as funds became available. Prehn, Hodge and Source 1 agreed that the Prehn Loan would accrue interest at an annual rate of 14% through December 2008, and thereafter at an annual rate of 10%, and Hodge agreed to personally guarantee repayment of 35% the Prehn Loan.

29. Source 1 repaid portions of the outstanding balance on the Prehn Loan as it was able, and likewise took additional advances from Prehn under the terms of the Prehn Loan if it was necessary. The current balance of the Prehn Loan is $85,545.00.

30. Prehn documented and tracked the advances and repayments under the Prehn Loan and Back Salary in a spreadsheet. Prehn and Hodge periodically reviewed this spreadsheet together to confirm its accuracy.

31. In December 2010, upon Prehn's departure as an employee of Source 1, Source 1 agreed to pay Prehn the bonus to which he would have been entitled on net profits for the first quarter of 2011 (the "Prehn Bonus"). The Prehn Bonus was to be $14,160.00. Source 1 never paid the Prehn Bonus.

32. In addition, Source 1 loaned Hodge, at a minimum, $27,500.00, which Hodge agreed to repay to Source 1. The outstanding balance of that loan is $18,072.00. Hodge has refused to honor his repayment obligation to Source 1.

33. Over the course of the nearly 10 years since Hodge and Prehn founded Source 1 in 2002, Source 1 has developed an excellent reputation in the promotional product, tradeshow, and marketing industries. "The Source, Where Brand Creates Demand" is associated with quality service and excellent promotional and marketing products on a local, regional, and national scale. As a result of Source 1's successes, "The Source" name is well-recognized in the promotional products and apparel industry.

34. While Source 1's customer base is reasonably broad, among Source 1's most important customers is BodyBuilding.com, another successful Idaho company. BodyBuilding.com comprises 60% to 80% of Source 1's annual revenue.

Dissolution of The Source

35. During 2011, and in the first quarter of 2012, numerous disputes arose between Hodge and Prehn over financial projections and management salaries, increases in Source 1 overhead, various perks provided to members, and Source 1's liquidity and lines of credit.

36. As a result of such disputes, on or about April 1, 2012 the members voted to dissolve Source 1. The winding up of Source 1 activities is currently ongoing.

37. As of April 1, 2012, Source 1 had open customer purchase orders that evidence such customers' agreements to purchase products from Source 1, but which have not yet been processed, filled, or billed to such customers (the "Existing Purchase Orders").

38. Since April 1, 2012, Hodge, Brown, and Source 1 management and staff continue to receive purchase orders from customers of Source 1 (the "New Purchase Orders").

39. The Existing Purchase Orders and New Purchase Orders are assets of Source 1. They come from existing customers of Source 1, including BodyBuilding.com, which represents between 60% and 80% of Source 1's purchase orders on an annual basis. Combined, the Existing Purchase Orders and New Purchase Orders represent gross revenue to Source 1 of between $900,000.00 and $1.5 million.

40. On April 6, 2012, in addition to attempting to address his concerns about the Prehn Loan and the Back Salary, Prehn made a written request of Hodge for a current balance sheet for Source 1, as well as access to all books and records of Source 1 in connection with the dissolution. Hodge has refused to provide such information or access to such Source 1 records..

41. On April 9, 2012, Hodge stated that Source 1 would refuse to honor its obligations under the Prehn Loan. Hodge also stated that Source 1 would refuse to pay Prehn the Back Salary.

42. On April 9, 2012, Hodge also provided a calculation detail regarding each member's quarterly distribution. The detail includes a mathematical error that decreased Prehn's distribution share and increased Hodge's distribution share, which error has not been corrected.

43. The April 9, 2012 quarterly distribution detail also reduced the Prehn distribution by $6,100.00 and the Bandak distribution by $5,499.00 for amounts paid by Source 1 for health insurance and mobile phone service, ignoring an agreement among all the Source 1 members in January 2011 that Source 1 would provide each member with health insurance and mobile phone service at no cost to the member.

44. On April 15, 2012, Hodge indicated in an e-mail that he did not intend to process the Existing Purchase Orders or New Purchase Orders, which are extremely valuable assets of Source 1.

45. In such April 15, 2012 e-mail to members, Hodge also stated his belief that the vote to dissolve Source 1 absolved him of any responsibility as an employee of Source 1 and that he was no longer bound by the Non-Compete Agreement.

46. On April 16, 2012, Hodge, Brown, and Claiborne, who represent 51% of the voting interest in Source 1, voted to appoint Hodge as the liquidator pursuant to Section 14.2 of the Operating Agreement. Prehn and Bandak both abstained and expressed concerns about Hodge's potential conflicts of interest and the potential for self-dealing during liquidation of Source 1's assets, in light of Hodge's stated intent to start a business identical to Source 1.

47. Hodge, in his capacity as liquidator and sole manager of Source 1, refuses to process the Existing Purchase Orders and New Purchase Orders in order to realize the profits from such orders for Source 1's creditors and members. Such profits are estimated to be between $330,000.00 and $530,000.00.

48. Hodge, in his capacity as liquidator and sole manager of Source 1, refuses to fairly value and/or offer for sale the business opportunities, trade secrets, trade name, trade dress, business methods, proprietary information, customer lists, and other intellectual property of Source 1, for purposes of liquidation and in order to satisfy Source 1 creditors and maximize distributions to Source 1 members, and in accordance with the Operating Agreement.

49. Hodge and Prehn have both expressed their intention to compete in the promotional products industry. Accordingly, there exists a market for liquidation of Source 1's valuable trade secrets and intellectual property, in addition to any real or personal property of Source 1.

Self-Dealing and Misappropriation of The Source Assets

50. On April 16, 2012, the same day Hodge was appointed as the liquidator for purposes of winding up Source 1, Source 2 filed a Certificate of Organization with the Idaho Secretary of State. The Certificate of Organization, a copy of which is attached hereto as Exhibit C, lists Hodge, Brown, and Desiree Claiborne (Claiborne's wife) as members of the newly formed limited liability company.

51. Like Source 1, Source 2 does business as "The Source." Source 2 provides the same promotional services and products as Source 1, and utilizes the same trade secrets, trade name, trade dress, business methods, website, customer lists and customer contacts

that belong to Source 1. Source 2 also currently uses Source 1 equipment and staff to receive and process purchase orders for and conduct business as or on behalf of Source 2.

52. Hodge, Brown, Claiborne, and Source 2 intend to, or already have, effected the re-issuance of the Existing Purchase Orders in the name of Source 2. Hodge, Brown, Claiborne, and Source 2 intend to fill the Existing Purchase Orders and bill for such products and services on behalf of Source 2, although such assets lawfully belong to Source 1.

53. Hodge, Brown, Claiborne and Source 2 have diverted the New Purchase Orders to Source 2. Hodge, Brown, Claiborne, and Source 2 intend to fill the New Purchase Orders and bill for such products and services on behalf of Source 2, although such assets lawfully belong to Source 1.

54. Hodge, Brown, Claiborne, and Source 2 intend to continue to utilize property and assets of Source 1, including, but not limited to, the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists and customer contacts, to benefit Source 2, and without realizing the value of such property and assets for creditors and members of Source 1.

55. Hodge, while acting as liquidator and manager of Source 1, also acts as a manager of Source 2.

The Auction of The Source Assets

56. On May 4, 2012, in preparation to auction Source 1 assets as part of the liquidation, Hodge forwarded an e-mail from Tony Fernandez at Technology Plastics, LLC to all members of Source 1 regarding the valuation of molds for the plastic "Patriot Shaker Cups," the most important product in the Source 1 product line. Technology Plastics, LLC operated and maintained the molds for Source 1, and currently has possession of the same. Assuming the

molds are in service and based on the cups that the cavities of such molds can produce, the value of the molds was estimated by Mr. Fernandez to be between $40,000.00 and $50,000.00. Mr. Fernandez estimated the scrap metal value of the molds to be no more than $1,900.00.

57. On May 5, 2012, in preparation to auction Source 1 assets, Hodge sent an e-mail to all members of Source 1 entitled "Intellectual Property" and attaching a Source 1 April 2012 balance sheet. Therein, Hodge stated that "[t]his will be a bid for our intellectual property or our goodwill in the company." The balance sheet valued "goodwill" at $88,395.52. Hodge also listed the intellectual property as: Logo, Patriot Shaker Name, Race, The Source Store, LLC, Product Names, Phone Number, Fax Number, Toll Free Number, Face Book Page, Swag Newsletter, Website. There was no mention of the molds or the design of the cups.

58. On May 16, 2012, Hodge sent an e-mail to all members of Source 1 outlining the auction process to occur on May 18, 2012, and setting forth the asset lots (see below) to be the subject of bidding. The process was to be a three bid process. The first two bids were open bids such that all parties could see the bids made by any other bidders, and the third bid involved a confidential submission.

59. The subject of the auction was four asset lots, consisting of (1) the molds for the plastic "Patriot Shaker Cups" (the "Shaker Molds") (2) two embroidery machines, (3) office inventory, and (4) intellectual property. The auction also included a fifth asset lot that Hodge termed as an "overall bid," which simply included all of the foregoing asset lots.

60. In his May 16, 2012 e-mail, Hodge specifically described the Shaker Molds lot (lot 1) as follows: "This will consist of all 5 of the molds that are use [*sic*] at Technology Plastic to complete the "Patriot Shaker."

61. Hodge described the intellectual property (lot 4) as follows: "This will consist of all good will in the company as well as all non tangible property of The Source Store, LLC. This will include all Names, Logo's, concepts, artwork, Product names, Website, Face book, Race concept." Hodge closed this description by stating, "If there is any other Intellectual properties that the membership would like to suggest please submit that request before Friday."

62. On Friday, May 18, 2012, the auction proceeded. Prehn and Bandak participated under written protest based on their objection to the auction process, because it provided an opportunity for self-dealing and misappropriation by Hodge, and because of it ignored basic principles of fairness and equity, and Prehn and Bandak participated only in an attempt to protect their interests.

63. Prehn was the high bidder for the Shaker Molds, at $96,000.00, and at the close of the auction, Prehn was awarded the Shaker Molds lot and also the office inventory lot. Hodge was awarded the embroidery machines lot and the intellectual property lot. Prior to conveyance of the assets, and pursuant to Hodge's auction instructions, each winning bidder was to tender payment for the assets purchased by 5:00 p.m. on Tuesday, May 22, 2012.

64. On May 21, 2012, Prehn sought assurances from Hodge that his purchase of the Shaker Molds granted him the right to produce the cups upon removal of any names or logos previously identified by Hodge as Source 1 intellectual property. Counsel for Hodge responded that, not only had Hodge purchased the Source 1 logo and the Patriot Shaker name, but that Hodge had also purchased the "design" of the shaker cup, taking the position that Prehn could not use the Shaker Molds to produce cups, with or without Source 1 intellectual property. Such position, if maintained, would render the Shaker Molds virtually worthless to Prehn, which Hodge understood fully.

65. On May 22, 2012, the date Prehn was to make payment for his purchased assets, counsel for Hodge sent correspondence Technology Plastics, LLC, who maintains and operates the Shaker Molds and produces the components that comprise the shaker cups, identifying Hodge as the owner of the shaker cup name and "design" and warning Technology Plastics, LLC not to reproduce such cups.

66. On May 22, 2012, prior to the 5:00 p.m. deadline, Prehn tendered the consideration for the two lots he was awarded at the auction in guaranteed funds to his counsel to hold, in trust, pending resolution of Hodge's post-auction argument that, notwithstanding their sale in separate auction lots, the purchaser of the Shaker Molds would not be able to use the Shaker Molds to produce cups without also possessing Source 1's intellectual property, which was previously defined only as goodwill, logos, Patriot Shaker name, race, product names, phone number, fax number, toll free number, Facebook page, Swag Newsletter, and website. Hodge and his counsel were timely notified of such tender.

67. Neither Source 1, nor Source 2, nor Hodge holds a patent for the Shaker Molds or the shaker cups at issue.

FIRST CLAIM FOR RELIEF

Breach of Agreements for Prehn Loan, Back Salary, and Prehn Bonus

68. The plaintiffs reallege paragraphs 1 through 67 above as though set forth in full.

69. The agreements between Source 1 and Prehn regarding the Prehn Loan, the Back Salary, and the Prehn Bonus are valid and enforceable agreements governed by and enforceable under Idaho law.

70. Source 1 is obligated to repay the Prehn Loan, the Back Salary, and the Prehn Bonus, and the Prehn Loan and Back Salary are entitled to a first priority position during dissolution and winding up of Source 1 as a creditor of Source 1.

71. Source 1's failure to pay the Prehn Bonus and repay the Prehn Loan and the Back Salary constitute a breach of the Source 1's agreements with Prehn.

72. As a direct and proximate result of such breaches, Prehn has suffered and will suffer monetary damages in the amount of $163,455.00.

SECOND CLAIM FOR RELIEF

Breach of Operating Agreement

73. The plaintiffs reallege paragraphs 1 through 72 above as though set forth in full.

74. Hodge has breached the Operating Agreement in a variety of ways, including without limitation:

(a) Hodge has made distributions to members without repayment in full of the Prehn Loan.

(b) Hodge has made erroneous distributions, both by virtue of accounting errors and in contravention of member agreements.

(c) Hodge has failed to continue to operate Source 1 honestly and faithfully and for the benefit of the members until final distribution.

(d) Hodge has failed to sell or otherwise properly liquidate all Source I assets as the liquidator.

(e) Hodge has failed to act with the care toward Source 1 that a person in his position should reasonably exercise under similar circumstances. Instead, he has take action to

undermine and harm Source 1, by competing with Source 1 using Source 1 equipment and staff, as well as the trade name, trademarks, trade dress, customer lists, and proprietary and confidential information belonging to Source 1 for the sole and exclusive benefit of himself and Source 2.

75. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

76. Unless restrained and enjoined by this Court, Hodge will continue to directly and proximately cause Source 1, Prehn and Bandak great and irreparable damage and harm for which there is no adequate remedy at law.

77. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

THIRD CLAIM FOR RELIEF

Breach of Non-Compete Agreement

78. The plaintiffs reallege paragraphs 1 through 77 above as though set forth in full.

79. The Non-Compete Agreement between Source 1 and Hodge is currently a valid and enforceable agreement that is governed by and enforceable under Idaho law.

80. Hodge is contractually prohibited from competing with Source 1 during his continued employment by and management of Source 1.

81. Hodge breached the Non-Compete Agreement and his other contractual duties to Source 1 by actively pursuing activities in direct competition with Source 1 while employed and acting as manager and liquidator of Source 1, including without limitation the formation of Source 2, acting as manager of Source 2, active diversion of Source 1 customers and assets to Source 2, and the use of the trade name, trademarks, trade secrets, and other proprietary and confidential information of Source 1 for the sole and exclusive benefit of Hodge and/or Source 2.

82. Hodge has further breached the Non-Compete Agreement and his other contractual duties to Source 1 by soliciting, recruiting, or hiring employees of Source 1 on behalf of Source 2 while employed and acting as manager of Source 1.

83. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

84. Unless restrained or enjoined by this Court, Hodge, by his continued breach of the Non-Compete Agreement, continues to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

85. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

86. The plaintiffs reallege paragraphs 1 through 85 above as though set forth in full.

87. Hodge owes fiduciary duties of fidelity, loyalty and obedience to Source 1.

88. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to account to Source 1 and to hold as trustee for it any profit or benefit derived in the conduct of winding up Source 1's activities, from the use by Hodge of Source 1's property, and from the appropriation of opportunities belonging to Source 1.

89. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to refrain from dealing with Source 1 as, or on behalf of, a person having an interest adverse to Source 1.

90. Pursuant to Idaho law, Hodge owes a fiduciary duty of loyalty to Source 1 and its members to refrain from competing with Source 1 in the conduct of Source 1's activities.

91. Hodge breached his fiduciary duties to Source 1, Prehn and Bandak in the manner set forth in the facts stated above.

92. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

93. Unless restrained or enjoined by this Court, Hodge, by his continued breach of fiduciary duties, continues to directly and proximately cause Source 1, Prehn and

Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

94. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FIFTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

95. The plaintiffs reallege paragraphs 1 through 94 above as though set forth in full.

96. Idaho law requires that all of the managers of a manager-managed limited liability company discharge the duties and exercise their rights consistently with the contractual obligation of good faith and fair dealing.

97. There is implied by law in every contract, including the Operating Agreement, a covenant of good faith and fair dealing, which obligated Hodge, Brown, and Claiborne to, among other things, deal with the plaintiffs fairly, honestly and equitably regarding all matters pertaining to their relationship with Source 1.

98. In addition, the implied covenant of good faith and fair dealing prohibited Hodge, Brown, and Claiborne from violating, nullifying or significantly impairing any of the benefits of the relationship owed to Source 1 and the plaintiffs.

99. Hodge, Brown, and Claiborne have violated their obligation of good faith and fair dealing in the manner described above.

100. As a direct and proximate result of such breaches, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

101. Unless restrained or enjoined by this Court, Hodge, Brown and Claiborne, by their continued breach of the covenant of good faith and fair dealing, continue to directly and proximately cause Source 1, Prehn and Bandak to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

SIXTH CLAIM FOR RELIEF

Breach of the Loan Agreement between Source 1 and Hodge

102. The plaintiffs reallege paragraphs 1 through 101 above as though set forth in full.

103. The loan agreement between Hodge and Source 1 is a valid and enforceable agreement governed by and enforceable under Idaho law.

104. Hodge is obligated to repay Source 1 for the loan.

105. Hodge's failure to repay the loan received from Source 1 constitutes a breach of Hodge's loan agreement with Source 1.

106. As a direct and proximate result of such breach, Source 1 has suffered and will suffer monetary damages in the amount of $18,072.00.

107. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

SEVENTH CLAIM FOR RELIEF

Violation of Idaho Trade Secrets Act

108. The plaintiffs reallege paragraphs 1 through 107 above as though set forth in full.

109. The confidential information belonging to Source 1, including but not limited to its ideas, business plans, opportunities, designs, purchasing practices, and customer lists is information that constitutes trade secrets within the meaning of the Idaho Trade Secrets Act, Idaho Code Sections 48-801 *et seq.*, because such information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and because Source 1 made reasonable efforts to maintain the secrecy of such information.

110. The trade secrets of Source 1 are protected from actual or threatened misappropriation by the Idaho Trade Secrets Act, and such actual or threatened misappropriation may be enjoined by Order of this Court pursuant to Idaho Code Section 48-802(1).

111. Hodge, Brown, Claiborne and Source 2 have threatened to use or disclose and/or have used or disclosed Source 1's trade secrets without Source 1's consent to advance the interests of Source 2, when Hodge, Brown and Claiborne knew or had reason to know that they had a duty to maintain the secrecy and/or limit their use of such trade secrets.

112. By threatening to use or by using the trade secrets of Source 1, without permission from Source 1, and by competing with Source 1 during its winding up, which competition will, if it has not already, inevitably lead to disclosure of the trade secrets of Source

1, Hodge, Brown, Claiborne and Source 2 have wrongfully threatened to misappropriate or misappropriated the trade secrets of Source 1 in violation of the Idaho Trade Secrets Act.

113. As a direct and proximate result of the threatened or actual misappropriation of Source 1's trade secrets by Hodge, Brown, Claiborne and Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

114. Unless restrained and enjoined by this Court, Hodge, Brown, Claiborne and Source 2 will, by threatening to misappropriate or misappropriating Source 1's trade secrets in violation of the Idaho Trade Secrets Act, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

115. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

EIGHTH CLAIM FOR RELIEF

Violation of the Lanham Act

116. The plaintiffs reallege paragraphs 1 through 115 above as though set forth in full.

117. The unauthorized use by Source 2 of Source 1's trade name and trademarks, including without limitation the use by Source 2 of the words "The Source" to identify Source 2 as a provider of promotional products to existing Source 1 customers and in the promotional products industry in general, constitutes false designations of origin and false

descriptions and representations. Source 2's uses create a likelihood of confusion and will cause mistake and deception in consumers' minds as to the affiliation, connection, or association of Source 2 and its goods with Source 1. Source 2's uses mislead as to origin, sponsorship or approval of Source 2's goods and services as by or authorized by Source 1. These acts violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

118. Source 2's use of certain custom fonts, logos and symbols of Source 1 constitute false designations of origin and false descriptions and representations in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

119. The foregoing acts of Source 2 were committed willfully, and Source 2 intended to cause confusion or to deceive customers and to trade on the goodwill and reputation of Source 1.

120. As a direct and proximate result of the unauthorized use of Source 1's trade name and trademarks by Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

121. Unless restrained and enjoined by this Court, Source 2 will, by the unauthorized use of Source 1's trade name and trademarks, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

122. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

NINTH CLAIM FOR RELIEF

Common Law Trade Name and Trademark Infringement

123. The plaintiffs reallege paragraphs 1 through 122 above as though set forth in full.

124. The unauthorized use by Source 2 of Source 1's trade name and trademarks, including without limitation the use by Source 2 of the words "The Source" to identify Source 2 as a provider of promotional products to existing Source 1 customers and in the promotional products industry in general, constitute common law trade name and trademark infringement.

125. As a direct and proximate result of the unauthorized use of Source 1's trade name and trademarks by Source 2, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

126. Unless restrained and enjoined by this Court, Source 2 will, by the unauthorized use of Source 1's trade name and trademarks, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

127. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

TENTH CLAIM FOR RELIEF

Unjust Enrichment

128. The plaintiffs reallege paragraphs 1 through 127 above as though set forth in full.

129. Source 2, by unfair and inequitable means, has obtained, is obtaining and will, unless enjoined, continue to obtain substantial benefits and competitive advantages of substantial economic value in the form of the Source 1 labor and equipment while Hodge acts to wind down Source 1 and contemporaneously diverts Source 1 revenue and profits to Source 2, as well as the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists, Existing Purchase Orders and New Purchase Orders that belong to Source 1.

130. Given the inequitable and unfair manner in which Source 2 has obtained, is obtaining and will obtain such benefits and advantages to the detriment of Source 1, Prehn and Bandak, Source 2 has been, is being and will, unless enjoined, continue to be unjustly enriched.

131. It would be inequitable to allow Source 2 to retain such advantages and benefits, or to continue to obtain such advantages and benefits in the future.

132. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

ELEVENTH CLAIM FOR RELIEF

Tortious Interference with Contract

133. The plaintiffs reallege paragraphs 1 through 132 above as though set forth in full.

134. Hodge, Brown, and Source 2 knew that Source 1 had contracts for the provision of Source 1 products to customers in 2012 in the form of the Existing Purchase Orders. Hodge, Brown, and Source 2 also knew that Source 1 had a beneficial business relationship with BodyBuilding.com and other Source 1 customers.

135. Without authority or privilege, Hodge, Brown, and Source 2 knowingly and willfully induced customers with Existing Purchase Orders, including BodyBuilding.com, to rescind the Existing Purchase Orders to Source 1 and issue new purchase orders to Source 2.

136. Without authority or privilege, Hodge, Brown, and Source 2 knowingly and willfully induced, and continue to induce, customers who, in the ordinary course of business, place orders with Source 1, including BodyBuilding.com, to place such orders with Source 2.

137. As a direct and proximate result of Hodge, Brown and Source 2's interference with Source 1's contractual and business relationships, Source 1, Prehn and Bandak have suffered and will suffer monetary damages, the amounts of which will be established at trial.

138. Unless restrained and enjoined by this Court, Source 2 will, by continued interference with Source 1's business and contractual relationships, continue to directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

139. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

TWELFTH CLAIM FOR RELIEF

Constructive Trust

140. The plaintiffs reallege paragraphs 1 through 139 above as though set forth in full.

141. By reason of the facts set forth above, Source 2, Hodge, Brown and Claiborne have been unjustly enriched by the receipt and use of the property and assets of Source 1, including the Existing Purchase Orders and New Purchase Orders, in that there is no evidence of any valuable consideration paid for such property and assets. Said enrichment has been to Source 2, Prehn and Bandak's detriment.

142. Accordingly, in equity, a constructive trust should be impressed upon the property and assets rightfully belonging to Source 1.

THIRTEENTH CLAIM FOR RELIEF

Injunctive Relief

143. The plaintiffs reallege paragraphs 1 through 142 above as though set forth in full.

144. Idaho law provides for injunctive relief when a party is threatened with irreparable damage and harm for which there is no adequate remedy at law.

145. Article 17 of the Operating Agreement provides for injunctive relief when any member violates the covenants and restrictions related to the disclosure or use of confidential information.

146. Hodge, Brown, Claiborne and Source 2's wrongful conduct, described with particularity in the foregoing paragraphs, is continuing and threatens to dilute or render valueless for purposes of sale the valuable assets of Source 1.

147. Further, the wrongful conduct of Hodge, Brown, Claiborne and Source 2 deprives Prehn and Bandak from fairly bidding on the valuable assets of Source 1, including without limitation the business opportunities, trade name, trademarks, trade dress, business

methods, trade secrets, customer lists and other proprietary and confidential information and intellectual property, in accordance with the Article 14 of the Operating Agreement.

148. Unless restrained and enjoined by this Court, Hodge, Brown, Claiborne and Source 2 will, by their continued wrongful conduct, directly and proximately cause Source 1, Prehn, and Bandak to continue to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

149. Further, the Idaho Limited Liability Company Act provides that this Court may order judicial supervision of the winding up of Source 1, including the appointment of a person to wind up Source 1's activities, for good cause.

150. The wrongful conduct of Hodge, Brown and Claiborne constitutes good cause for judicial oversight and appointment of an objective and impartial person to wind up Source 1's activities because, with the aid of Hodge as liquidator and sole manager of Source 1, Source 2 continues to divert Source 1's assets and goodwill during the period of winding up. Specifically, and without limitation, the following conduct constitutes good cause for judicial oversight and appointment of a new liquidator:

(a) The formation of Source 2 by Hodge, Brown and Claiborne to directly compete with Source 1 during the course of wind up activities;

(b) The appointment by Hodge, Brown and Claiborne of Hodge as liquidator on the same date as the formation of Source 2 to ensure the self-dealing and diversion of Source 1 opportunities, trade names, trademarks, trade dress, and other confidential and proprietary information and intellectual property to Source 2 without a full and fair opportunity for members to realize on the value of such assets;

(c) Hodge's management of Source 1 employees and equipment for the sole and exclusive benefit of Source 2;

(d) The failure to operate Source 1 for a reasonable time to process Existing Purchase Orders and New Purchase Orders received from Source 1 customers for the benefit of Source 1 creditors and members; and

(e) The failure to fairly assess or value for purposes of the sale of all assets of Source 1 to ensure the satisfaction of creditors and to maximize distribution to Source 1 members.

151. Unless this Court intervenes and appoints a new liquidator, Hodge, Brown and Claiborne will effectively loot Source 1 for the sole and exclusive benefit of Source 2, including the diversion of assets for which money damages may prove difficult or impossible to ascertain.

152. A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

FOURTEENTH CLAIM FOR RELIEF

Breach of Warranties

153. The plaintiffs reallege paragraphs 1 through 152 above as though set forth in full.

154. Source 1 and Hodge, in his capacity as liquidator for Source 1, breached the implied warranty of merchantability and the implied warranty of fitness for a particular

purpose by misrepresenting the scope and nature of the Shaker Molds lot and the intellectual property lot sold at the auction.

155. As a direct and proximate result of Hodge and Source 1's breach of such warranties, Prehn has suffered and will suffer monetary damages, the amounts of which will be established at trial.

156. Unless restrained and enjoined by this Court, Hodge will, by breach of such warranties, continue to directly and proximately cause Prehn to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

FIFTEENTH CLAIM FOR RELIEF

Unconscionable Auction Contract

157. The plaintiffs reallege paragraphs 1 through 156 above as though set forth in full.

158. Source 1 and Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder at the auction, engaged in unconscionable conduct by misrepresenting the nature and scope of the Shaker Molds auction lot and the intellectual property auction lot.

159. As a direct and proximate result of Hodge and Source 1's unconscionable conduct, Prehn has suffered and will suffer monetary damages, the amounts of which will be established at trial.

160. Unless restrained and enjoined by this Court, Hodge will, as a result of Source 1 and Hodge's unconscionable conduct, continue to directly and proximately cause Prehn to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

SIXTEENTH CLAIM FOR RELIEF

Fraud

161. The plaintiffs reallege paragraphs 1 through 160 above as though set forth in full.

162. Source 1 and Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder, knowingly and deliberately misrepresented to Prehn that the Shaker Molds, sold as a separate lot in the auction, were to be sold to make shaker cups, and not for scrap metal.

163. Source 1 and Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder, knowingly and deliberately misrepresented to Prehn that the intellectual property of Source 1 included the Source 1 name and logos, but not the right to use the Shaker Molds for their intended purpose, which Shaker Molds were sold as a separate lot.

164. Source 1 and Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder, knew that such statements were false and that Hodge would ultimately assert rights to the "design" of the Shaker Molds and to the product produced by such Shaker Molds as his intellectual property.

165. Source 1 and Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder, made such statements to Prehn in order to induce him to purchase the Shaker Molds so that Hodge could thereafter threaten violation of Hodge's alleged intellectual property rights.

166. Source 1 and Hodge knew that such statements were false, and intended that Prehn rely upon such statements.

167. Prehn relied upon Hodge's statements regarding the scope and nature of the auction lots.

168. Prehn did not know that Hodge's statements were false.

169. In light of the fact that the descriptions of auction lots were provided by Hodge in his capacity as auctioneer and liquidator for Source 1, Prehn was justified in relying upon the truth of such statements.

170. As a direct and proximate result of Hodge and Source 1's fraud, Prehn has suffered and will suffer monetary damages, including but not limited to lost business opportunities, the amounts of which will be established at trial.

171. Unless restrained and enjoined by this Court, Hodge will, as a result of his fraudulent conduct, continue to directly and proximately cause Prehn to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

SEVENTEENTH CLAIM FOR RELIEF

Promissory Estoppel

172. The plaintiffs reallege paragraphs 1 through 171 above as though set forth in full.

173. Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder, made a specific and unambiguous promise that the Shaker Molds could be used to produce cups and that the intellectual property auction lot included Source 1's goodwill, names, logos, and website, but did not include use of the Shaker Molds for their intended purpose.

174. Hodge and Source 1's promise was made under circumstances in which Hodge intended and reasonably expected that his promise would be relied on, and Prehn did in fact reasonably rely upon that promise.

175. As a direct and proximate result of Hodge and Source 1's breach of such reliance, Prehn has suffered and will suffer monetary damages, the amounts of which will be established at trial.

176. Unless restrained and enjoined by this Court, Hodge will, by virtue of Prehn's reliance, continue to directly and proximately cause Prehn to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

EIGHTEENTH CLAIM FOR RELIEF

Equitable Estoppel

177. The plaintiffs reallege paragraphs 1 through 176 above as though set forth in full.

178. Hodge, in his multiple capacities of auctioneer and liquidator for Source 1 and as a competing bidder, did not adequately describe the auction lots, and in particular, did not disclose that it was his position that sale of the Shaker Molds was for scrap metal purposes only, and that the intellectual property auction lot actually included the right to use the Shaker Molds for their intended purpose. Such failures amount to a false representation or concealment of material facts.

179. Hodge and Source 1's former representation that the intellectual property auction lot included goodwill, trade names, logos, and the website and that the Shaker Molds lot included the ability to make the shaker cups is inconsistent with Hodge's attempt to assert a

protectable intellectual property right as it relates to the use of the Shaker Molds for their intended purpose.

180. Hodge and Source 1 intended or at least expected that Hodge's actions would be relied upon by Prehn during his participation in the auction of the Shaker Molds and intellectual property.

181. Hodge knew that he was concealing material facts from Prehn at the time of the auction.

182. Prehn had no means of knowing that Hodge had provided false and/or incomplete information in his description of the auction lots, and relied upon the representation made by Hodge in numerous communications defining the nature and scope of such lots.

183. As a direct and proximate result of Hodge's and Source 1's concealment and false representations, Prehn has suffered and will suffer monetary damages, the amount of which will be established at trial.

184. Unless restrained and enjoined by this Court, Hodge will, by virtue of Prehn's reliance on his misrepresentations, continue to directly and proximately cause Prehn to suffer great and irreparable damage and harm for which there is no adequate remedy at law.

NINETEENTH CLAIM FOR RELIEF

Declaratory Relief

185. The plaintiffs reallege paragraphs 1 through 184 above as though set forth in full.

186. The plaintiffs are entitled to a judicial declaration that, upon removal of any Source 1 trade name, trademark, and logo, the "design" of the shaker cup produced by the Shaker Molds is not the protectable intellectual property of Hodge.

ATTORNEY FEES

187. The defendants' actions have required the plaintiffs to retain counsel to represent their interests. The plaintiffs are entitled to the recovery of their costs and attorney fees pursuant to the terms of the Operating Agreement and/or Idaho Code Sections 12-120(3) and/or 12-121.

PUNITIVE DAMAGES

188. The actions of the defendants alleged herein were taken maliciously, intentionally and willfully, with gross negligence and reckless disregard for, and in extreme deviation of, all appropriate and reasonable standards of care pertaining to the facts of this case. Pursuant to Idaho Code Section 6-1604, the plaintiffs hereby reserve the right to amend further this Complaint, with leave of the Court, adding a prayer for relief seeking exemplary and punitive damages against defendants.

WHEREFORE, the plaintiffs pray for relief as follows:

1. With respect to the First Claim for Relief, a judgment against Source 1 in favor of Prehn in the amount of $154,295.00;

2. With respect to the Second Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

3. With respect to the Third Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

4. With respect to the Fourth Claim for Relief, a judgment against Hodge in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

5. With respect to the Fifth Claim for Relief, a judgment against Hodge, Brown and Claiborne in favor of Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

6. With respect to the Sixth Claim for Relief, a judgment against Hodge in favor of Source 1 for damages in the amount of $18,072.00;

7. With respect to the Seventh Claim for Relief, a judgment against Source 2, Hodge, Brown and Claiborne in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

8. With respect to the Eighth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

9. With respect to the Ninth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

10. With respect to the Tenth Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

11. With respect to the Eleventh Claim for Relief, a judgment against Source 2 in favor of Source 1, Prehn and Bandak for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

12. With respect to the Twelfth Claim for Relief, creation of a constructive trust for Source 1, Prehn and Bandak's benefit as to the assets and property of Source 1.

13. With respect to the Thirteenth Claim for Relief, injunctive relief against Hodge, Brown, Claiborne, and Source 2, requiring (a) Hodge to comply with the Non-Compete Agreement; (b) Hodge, Brown and Claiborne to comply with Article 17 of the Operating Agreement regarding confidential information; (c) Source 2, Hodge, and Brown to cease and desist processing Source 1 customer orders for the benefit of Source 2 or any other entity; (d) Source 2, Hodge and Brown to cease and desist using the trade name, trademarks, and trade dress of Source 1 to carry on the business of Source 2 or any other entity; (e) the appointment of an impartial liquidator to inventory, assess, value and sell or otherwise liquidate all Source 1 assets, including intangible assets in accordance with the Operating Agreement and Idaho law; and (f) Hodge to ensure that orders placed by Source 1 customers during wind up are received and processed in the ordinary course of business on the account of Source 1 until such time as the appointed liquidator sells or releases the valuable intangible assets of Source 1, including the Non-Compete Agreements and restrictive covenants regarding confidential information set forth in Article 17 of the Operating Agreement, after a full and fair opportunity for members to bid on such assets;

14. With respect to the Fourteenth Claim for Relief, a judgment against Source 1 and Hodge for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

15. With respect to the Fifteenth Claim for Relief, a judgment against Source 1 and Hodge for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

16. With respect to the Sixteenth Claim for Relief, a judgment against Source 1 and Hodge for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

17. With respect to the Seventeenth Claim for Relief, a judgment against Source 1 and Hodge for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

18. With respect to the Eighteenth Claim for Relief, a judgment against Source 1 and Hodge for damages in an amount to be determined at trial, but which amount exceeds the jurisdictional minimum of this Court;

19. With respect to the Nineteenth Claim for Relief, a judicial declaration that, upon removal of any Source 1 trade name, trademark, and logo, the "design" of the shaker cup produced by the Shaker Molds is not the protectable intellectual property of Hodge.

20. For plaintiffs' costs and attorney fees;

21. For pre-judgment interest; and

22. For such other and further relief as the Court may deem just and proper.

DATED this 29 day of June, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of June, 2012, I caused a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** to be served by the method indicated below, and addressed to the following:

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Attorneys for Defendant The Source Store, LLC

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( ) Facsimile

Michael O. Roe

EXHIBIT A

OPERATING AGREEMENT
OF
THE SOURCE STORE, LLC

This Operating Agreement of **THE SOURCE STORE, LLC**, an Idaho limited liability company, is made and entered into as of the 1st day of April, 2003, by and between Michael L. Hodge II ("Hodge") and Donnelly Prehn ("Prehn") (Hodge and Prehn are sometimes referred to in this Operating Agreement as the "Initial Members"), and such other Persons who may execute this Agreement from time to time as Members.

RECITALS:

A. The Members desire to form the Company as an Idaho limited liability company pursuant to the terms and conditions of this Agreement, and the Idaho Limited Liability Act, Idaho Code §§ 53-601 *et seq*.

B. The parties hereto desire to provide for the governance of the Company and to set forth in detail the Members' respective rights and duties to the Company.

C. The Members executing this Agreement, or a counterpart hereof, agree to the terms and conditions of this Agreement, as it may from time to time be amended according to its terms.

D. Capitalized terms used herein shall have the meanings given such terms in *Article 18* of this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - ORGANIZATION

1.1 Formation. The Company has been formed as a limited liability company pursuant to the Act by filing Articles of Organization described in Section 53-608 of the Act (the "Articles") with the Secretary of State of the State of Idaho (the "Secretary of State") in conformity with the Act. The Company and, if required, each of the Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things (including keeping books and records and making publications or periodic filings) as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Idaho.

1.2 Company Name. The name of the Company is **THE SOURCE STORE, LLC**, and all business of the Company shall be conducted under that name or under any other name or variations thereof as the Manager may determine, but in any case, only to the extent permitted by applicable law. The Members agree that the Company shall file *d/b/a* applications in appropriate states, including Idaho, to operate under the name "**The Source**."

1.3 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and that location reflected in the Articles as filed in the office of the Secretary of State. The Manager may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State. If the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a Notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

1.4 Principal Office. The Principal Office of the Company shall be located at such place as the Members may designate, which need not be in the State of Idaho, and the Company shall maintain its records there. The Company may have such other offices as the Members may designate from time to time.

1.5 Foreign Qualification. Each Member agrees to execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue or terminate the Company as a foreign limited liability company in all jurisdictions in which the nature of the business conducted by the Company or the ownership or leasing of property by the Company may require such qualification.

1.6 Term. The term of this Agreement (the "Term") shall end, if not sooner terminated in accordance with the provisions hereof, on December 31, 2040.

1.1 No State-Law Partnership. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Idaho Uniform Partnership Act or the Idaho Uniform Limited Partnership Act. The Members do not intend to be partners or joint venturers to each other, or as to any third party, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise. To the extent that the Manager or any Member, by word or action, represents to another Person that any other Member is a partner or joint venturer with such Member or Manager, or that the Company is a partnership or joint venture, the Manager or Member making such wrongful representation shall be liable to all other Member(s) and Manager(s) who incur personal liability by reason of such misrepresentation.

ARTICLE 2 - PURPOSE AND NATURE OF BUSINESS

2.1 Purpose; Power and Authority. The Company is being formed to: (a) sell, market and distribute corporate promotional products; and (b) engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have all powers provided for in the Act and the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this *Article 2* and elsewhere in this Agreement. The Company exists only for the purpose specified in this *Article 2*, and may not conduct any other business without the approval of 51% or more of the Member Interest in the Company. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Idaho.

2.2 Company Property. No real, personal or other Property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title shall be vested solely in the Company. Without limiting the foregoing, all trade secrets, intellectual property, and other business assets used or developed by the Company are owned and controlled exclusively by, and in the sole discretion of, the Company. The Membership Interests of the Members in the Company, as represented by the Membership Share Certificates, shall constitute their own personal property.

2.3 Non Compete Agreements. Concurrently with the execution and delivery of this Agreement, each of the Initial Members shall sign and deliver a Non-Compete Agreement, substantially in the form attached hereto as Exhibit A, pursuant to which each of the Initial Members shall agree not to solicit customers of the Company for a competing business for a period of two (2) years following his termination of employment with and/or ownership of the Company.

2.4 Time Devoted to Business. It is understood and agreed by the Initial Members that Hodge shall devote his full-time efforts to the business of the Company. It is further understood and agreed by the Initial Members that Prehn shall devote his time to the Company on a part-time basis, and that his duties shall be split between the Company and Boise Capital Group, with the majority of his time spent on Company business.

2.5 Facilities Provided to Prehn. During the term of his association with the Company, the Company will provide Prehn with an office at the Company's principal place of business and access to phone, fax and copier equipment; *provided, however*, that any incremental charges, excluding rent or time spent on Company business, will be reimbursed to the Company by Prehn. It is understood and agreed by the Initial Members that Prehn will conduct business activities at this location on behalf of both the Company and Boise Capital Group.

ARTICLE 3 - ACCOUNTING AND RECORDS; TAX MATTERS

3.1 Records to be Maintained. At the expense of the Company, the Manager shall maintain or cause to be maintained reasonable books, records and accounts of all operations and expenditures of the Company. At a minimum, the Manager shall keep or cause to be kept the following records at the Company's Principal Office in accordance with Section 53-625 of the Act:

(a) A current list, setting forth the full name and last known mailing address of each current and former Manager and each current and former Member and Assignee, in alphabetical order;

(b) A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which Articles of Amendment have been executed;

(c) Copies of the Company's federal, foreign, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for the period;

(d) Copies of this Agreement, including all amendments hereto, and copies of any written operating agreements no longer in effect;

(e) Minutes of every meeting of the Members and/or Manager(s) and any written consents obtained from Members and/or Manager(s) for actions taken without a meeting; and

(f) Any other books and records required to be maintained by the Act.

3.2 Access to Books and Records. All Members shall have the right at all reasonable times during usual business hours to examine, and make copies of or extracts from, the books of account of the Company and the records required to be maintained hereunder. Such right may be exercised through any Representative of such Member designated by it. Each Member shall bear all expenses incurred in any such examination made for such Member's account. Any information obtained and copied pursuant to operation of this *Section 3.2* shall be kept and maintained in strictest confidence in accordance with the provisions of *Article 17* hereof.

3.3 Financial and Tax Reporting Principles.

(a) Accounting Principles. The Company's books and records shall be kept, and its income tax returns and financial statements prepared, under such permissible method of accounting, consistently applied, as a Majority Vote of Membership Shares determines is in the best interest of the Company and its Members, except that the financial statements and records shall be kept consistent with GAAP.

(b) Taxable Year. The taxable year of the Company shall be its Fiscal Year.

3.4 Annual Reports to Current Members. To the extent reasonably practicable, the Manager shall prepare and mail to each current Member, or shall cause to be prepared and mailed to each current Member, within ninety (90) days of the end of each Fiscal Year, a financial report setting forth the following: (i) a balance sheet of the Company as of the close of such Fiscal Year; (ii) a statement showing the Net Profit or Net Loss of the Company for such Fiscal Year in reasonable detail; and (iii) a statement indicating changes in the aggregate Capital Account balances of the Members for such Fiscal Year. Each Member shall receive for approval a copy of the annual budget of the Company (the "Annual Budget"), consisting of an operating budget, a capital expenditure budget and a cash usage plan for the Company, for each Fiscal Year of the Company no later than fifteen (15) days prior to the commencement of such Fiscal Year. Each Annual Budget shall be approved by a Majority Vote of Membership Shares.

3.5 Tax Information for Current and Former Members and Assignees. To the extent reasonably practicable, within ninety (90) days after the end of each Fiscal Year, the Manager shall prepare and mail (or cause to be prepared and mailed) to each current Member and Assignee and, to the extent necessary, to each former Member and Assignee (or such Member's or Assignee's legal representatives), a report setting forth in sufficient detail such information as shall enable such Person to prepare its federal, state and local income tax returns in accordance with the laws, rules and regulations then prevailing. The Company shall also provide Form K-1s to Members and Assignees as soon as practicable after the end of each Fiscal Year.

3.6 Indemnification Reporting. In the event the Company indemnifies or advances expenses to a Member, Manager or Officer in connection with a Proceeding as provided in *Article 15* hereof, the Company shall promptly report the indemnification or advance in writing to the Members.

3.7 Filing of Tax Returns. The Tax Matters Partner (as defined in *Section 3.8* below) shall prepare and file, or cause to be prepared and filed, a federal information tax return and any required state and local income tax and information returns for each tax year of the Company. The Tax Matters Partner has sole and absolute discretion as to whether or not to prepare and file (or cause to be prepared and filed) composite, group or similar state, local and foreign tax returns on behalf of the Members and Assignees where and to the extent permissible under applicable law. Each Member and Assignee hereby agrees to execute any relevant documents (including a power of attorney authorizing such a filing), to furnish any relevant information and otherwise to do anything necessary in order to facilitate any such composite, group or similar filing. Any taxes paid by the Company in connection with any such composite, group or similar filing shall be treated as an advance to the relevant Members and Assignees (with interest being charged thereon) and shall be recouped by the Company out of any Distributions subsequently made to such relevant Members and Assignees. Such advances may be funded by Company borrowings. Both the deduction for interest payable by the Company with respect to any such borrowings, and the corresponding income from interest received by the Company from the relevant Members and Assignees, shall be specifically allocated to such Members and Assignees.

3.8 Tax Matters Partner. The tax matters partner of the Company (the "Tax Matters Partner") as provided in section 6231(a)(7) of the Code, is hereby designated as Michael L. Hodge II. A Majority Vote of Membership Shares may change the identity of the Tax Matters Partner from time to time by resolution. Each Person (for purposes of this provision a "Pass-Thru Partner") that holds or controls a Membership Interest on behalf of, or for the benefit of another Person or Persons, or which Pass-Thru Partner is beneficially owned (directly or indirectly) by another Person or Persons, shall, within thirty (30) days following receipt from the Tax Matters Partner of a Notice or document, convey such Notice or other document in writing to all holders of beneficial interests in the Company holding such Membership Interest through such Pass-Thru Partner. In the event the Company shall be the subject of an income tax audit by any federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member and Assignee. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Company.

3.9 Expenses of Tax Matters Partner; Indemnification. The Company shall indemnify and reimburse the Tax Matters Partner for all reasonable expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members attributable to the Company. The payment of all such expenses shall be made before any Distributions are made to Members (and such expenses shall be taken into consideration for purposes of determining Net Cash from Operations) or any discretionary Reserves are set aside. Neither the Tax Matters Partner nor any Member shall have any obligation to provide funds for such purpose. The provisions for exculpation and indemnification set forth in *Article 15* of this Agreement shall be fully applicable to the Tax Matters Partner for the Company.

3.10 Tax Elections.

(a) Elections. The Tax Matters Partner shall make the following elections on the appropriate tax returns:

(i) To adopt the Company's Fiscal Year in accordance with the Code and applicable Regulations;

(ii) To adopt an appropriate method of accounting and to keep the Company's books and records on that method; and

(iii) Any other election the Manager deems appropriate and in the best interests of the Company and the Members, including, without limitation, an election under section 754 of the Code.

(b) Intent of Parties. It is the intent of the parties to this Agreement that the Company be treated as a partnership for United States federal income tax purposes and, to the extent permitted by applicable law, for state and local franchise and income tax purposes. Neither the Company, the Manager, the Tax Matters Partner nor any Member may make any election for the Company to be excluded from the application of the provisions of Subchapter K of Subtitle A of the Code or any other provisions of applicable state or local law, and no provision of this Agreement shall be construed to sanction or approve such an election.

3.11 Withholding. With respect to any Member or Assignee who is not a United States Person within the meaning of the Code, any tax required to be withheld under section 1446 or other provisions of the Code, or under state law, shall, unless already reflected in an appropriate charge to the Capital Account of the Member or Assignee, be charged to such Member's or Assignee's Capital Account as if the amount of such tax had been distributed to such Member or Assignee. The amount so withheld shall be treated as a distribution of Net Cash from Operations to such Member or Assignee for all purposes of this Agreement.

ARTICLE 4 - MEMBERSHIP

4.1 Registry of Members. Attached as **Schedule 1** hereto is a registry of the names of the Members, together with their addresses, their Sharing Ratios in, and their Capital Contributions to, the Company, as well as the number of Membership Shares owned by each Member. The Manager shall cause to be made all appropriate entries on and shall periodically amend **Schedule 1** to reflect accurately the membership in the Company, and all relevant information concerning the ownership of Membership Shares during the term of this Agreement. Similar information with respect to Assignees shall be included on **Schedule 1** from time to time as appropriate.

4.2 Representations and Warranties of Members. By the due execution and delivery of this Agreement, or a counterpart signature page hereof, each Member represents and warrants to the Company, the Manager and to each other Member that:

(a) Due Authority. The Member has all necessary corporate, partnership, limited liability company, trust or other applicable power and authority to enter into this Agreement and to perform its obligations hereunder, and all necessary actions by its board of directors, shareholders, partners, members, managers, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery and performance of this Agreement by the Member have been duly taken.

(b) Due Execution. The Member has duly executed and delivered this Agreement or has caused its duly authorized officer or agent to execute and deliver this Agreement.

(c) Non-Contravention. The Member's authorization, execution, delivery and performance of this Agreement do not conflict with the charter or organizational documents of the Member or with any other agreement or arrangement to which the Member is a party or by which it, or its assets or properties, is bound.

(d) Purchase Entirely for Own Account; Knowledge. The Member (i) is acquiring its Membership Shares exclusively for the Member's own account, for investment purposes only and not with a view to or for the resale, distribution, subdivision or fractionalization thereof, and the Member has no contract, understanding, undertaking, agreement or arrangement of any kind with any Person to sell, transfer or pledge to any such Person its Membership Shares or portion thereof, nor does the Member have any plans to enter into any such contract, understanding, undertaking, agreement or arrangement; (ii) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company and has obtained, in such Member's judgment, sufficient information regarding the Company and its business and prospects to evaluate the merits and risks of its investment; (iii) in making its decision to acquire Membership Shares, the Member has been advised by its own business, tax and legal advisors and is not relying on the Company or the Manager or on any other Members with respect to the business, tax or legal considerations involved in such investment; and (iv) is able to bear the economic risk of an investment in Membership Shares for an indefinite period of time. The Member has been furnished access to such information and documents as it has requested and has been afforded an opportunity to ask questions of, and receive answers from, Representatives of the Company concerning the terms and conditions of this Agreement and the acquisition of Membership Shares.

ARTICLE 5 - MEMBERSHIP SHARES; CAPITALIZATION

5.1 Common Membership Shares. All Membership Interests of the Members in the Company shall be denominated in Membership Shares and set forth on the Member Registry attached as **Schedule 1** hereto. The Member Registry shall be amended from time to time as required to reflect issuances of additional Membership Shares to new Members, changes in the number of Membership Shares held by the Members, and to reflect the addition, substitution or dissociation of Members. The number of Membership Shares held by a Member shall not be affected by any (i) issuance by the Company of additional Membership Shares to other Members or (ii) a change in the Capital Account of such Member (other than such changes as are required to reflect additional Capital Contributions from such Member in exchange for the issuance of new Membership Shares).

5.2 Capitalization. The Company is authorized to issue up to Two Hundred Thousand (200,000) Membership Shares, designated "Common Membership Shares," the number of which Shares may be changed in the future with the approval of a Majority Vote of Membership Shares. With the approval of the Majority Vote of Membership Shares, the Company may issue Common Membership Shares as follows: (i) in connection with the admission of Additional Members in accordance with the provisions of *Section 13.2*; (ii) as the Members deem advisable to secure and retain the services of new key employees, consultants or independent contractors, and to provide incentives for such Persons to exert maximum efforts for the success of the Company; and (iii) to raise outside capital for the Company's business. The Company, with the approval of a Majority Vote of Membership Shares, is authorized to issue options or warrants to purchase Common Membership Shares, restricted Common Membership Shares (subject to vesting and repurchase rights in favor of the Company), and other securities convertible, exchangeable or exercisable for Common Membership Shares, on such terms as may be determined by the Majority Vote of Membership Shares.

5.3 Changes to Capital Structure. Subject to the terms of this Agreement, the terms of admission or issuance may provide for the creation of different classes, groups or series of Membership Shares having different rights, powers, preferences, restrictions and duties as determined by the Majority Vote of Membership Shares. Any creation of any new class, group or series of Membership Shares shall be reflected in an amendment to this Agreement indicating such rights, powers, preferences, restrictions and duties.

5.4 Membership Share Certificates. Membership Shares shall be represented by a certificate of membership (the "Membership Share Certificates"). The exact contents of a Membership Share Certificate shall be determined by action of the Members but shall be issued substantially in conformity with the requirements set forth herein. The Membership Share Certificates shall be numbered serially, as they are issued, shall be impressed with the Company's seal or a facsimile thereof, if any, and shall be signed by the Manager or duly authorized Members of the Company. Each Membership Share Certificate shall state the name of the Company, the fact that it is organized under the laws of the State of Idaho as a limited liability company, the name of the Person to whom issued, the date of issuance and the class of Membership Shares it represents. All Membership Share Certificates surrendered to the Company for Transfer shall be canceled and no new Membership Share Certificates shall be issued until the former Membership Share Certificate of like number and tenor shall have been surrendered and canceled; *provided, however*, in the case of a lost, destroyed or mutilated Membership Share Certificate, a new Certificate may be issued therefor on such terms and indemnity to the Company as the Members may prescribe.

5.5 Legend. Each Membership Share Certificate shall bear the following legend:

"THE LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF WITHOUT COMPLYING WITH THE PROVISIONS OF THE OPERATING AGREEMENT (THE "AGREEMENT") BY AND AMONG THE MEMBERS OF **THE SOURCE STORE, LLC** , AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE WITH THE COMPANY. IN ADDITION TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SUCH AGREEMENT, NO TRANSFER OF THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE MAY BE MADE (A) EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER (THE "1933 ACT"), AND ALL APPLICABLE STATE SECURITIES LAWS OR (B) UNLESS SUCH TRANSFER IS PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT. THE HOLDER OF THIS CERTIFICATE BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE TERMS AND PROVISIONS OF THE AFORESAID AGREEMENT."

5.8 Voting of Membership Shares. The rights, privileges and powers, including voting powers, of each Common Membership Share shall be identical, with each Common Membership Share being entitled to one vote on all matters with respect to which the Members are entitled to vote as provided in this Agreement; *provided, however*, that Membership Shares which represent only Economic Rights of an Assignee who is the beneficial owner of such Membership Shares (but who has not been admitted as a Substitute Member of the Company) shall not be voted.

5.9 Redemption of Membership Shares. No Member shall have any right to require the redemption by the Company of any Membership Shares.

5.10 Federal and State Securities Laws. Each Member hereby acknowledges that the Membership Shares have not been registered under the 1933 Act, and have not been registered or qualified under the securities laws of any state or foreign jurisdiction, inasmuch as they are being acquired in a transaction not involving a public offering. As a result, the Members each acknowledge their understanding that an investment in Membership Shares is of a long-term nature and that the Membership Shares may not be resold or transferred by any Member without appropriate registration or the availability of an exemption from such requirements.

ARTICLE 6 -- MANAGER; RIGHTS AND DUTIES

6.1 Initial Manager. The Manager shall have the sole and exclusive right and power to manage the business of the Company, and shall have all of the rights and powers that may be possessed by managers under the Act, including without limitation those rights and powers described in this *Article 6*. The initial Manager of the Company shall be Michael L. Hodge II.

6.2 Management Authority. The Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

6.3 Officers. The Manager may appoint himself or other individuals as officers of the Company ("Officers"), which may include, but shall not be limited to or be required to include the following: a Chief Executive Officer, President, Vice President, Secretary, and such other officers as the Manager shall determine from time to time. The Manager may delegate a portion of his day-to-day management responsibilities to any such Officers, as determined by the Manager from time to time, and such Officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as so authorized by the Manager. Officers need not be Members of the Company, and any number of offices may be held by the same individual. The salaries or other compensation, if any, of the Officers of the Company (including the Manager, if applicable) shall be fixed from time to time by the Majority Vote of Membership Shares. The initial Officers of the Company are set forth on Schedule 2 attached hereto.

6.4 No Other Authority. Unless authorized to do so by this Agreement or pursuant to its provisions, no Member, Officer, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

6.5 Compensation of Manager. The Manager shall be reimbursed for all reasonable expenses incurred in managing the Company and shall be entitled to compensation in an amount to be determined from time to time by the Majority Vote of Membership Shares.

6.6 Manager's Standard of Care. In carrying out his duties and exercising his powers hereunder, the Manager shall exercise reasonable skill, care and business judgment. The Manager shall not be liable to the Company or to the other Members for any act or omission performed or omitted by him as Manager or Tax Matters Partner, unless such act or omission constitutes Disabling Conduct. In discharging his duties, the Manager shall be fully protected in relying in good faith upon the records required to be maintained under *Article 4* hereof and upon such information, opinions, reports or statements by any of the Company's other Members, or agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid.

6.7 Removal and Appointment of Managers.

(a) Additional Managers. Additional Persons may be appointed to the position of Manager (in addition to the initial Manager) with the affirmative vote, consent or approval of the Majority Vote of Membership Shares.

(b) Term of Manager. The Manager shall serve until or unless: (a) an Event of Dissociation of the Manager as a Member occurs; (b) the personal physician of the Manager shall state in writing that, in his or

her opinion, such Manager is physically or mentally incapacitated to such an extent that the Manager is unable to give prompt and intelligent attention to the Company's affairs, and the Manager shall be deemed to have resigned effective upon the filing in the Company's records of the physician's statement, whether or not the Manager may have been adjudicated or certified an incompetent person; or (c) the Manager is removed, with or without cause, by the affirmative vote, consent or approval of the Majority Vote of Membership Shares. Each individual by accepting the office of Manager, thereby agrees to cooperate in any medical examination necessary to implement this *Section 6.7*, waives the patient-physician privilege and consents to the disclosure of the Manager's medical records to the extent required to implement this *Section 6.7*, and agrees that the Manager's obligation to comply with this *Section 6.7* is specifically enforceable.

(c) Liability of Manager. If the Manager ceases to be a Manager for any reason hereunder, such Person shall not be discharged from any debts and obligations the Manager may have had to or on behalf of the Company existing at the time such Person ceases to be the Manager, regardless of whether, at such time, such debts or liabilities were known or unknown, actual or contingent. A Person shall not be liable as a Manager for Company debts and obligations arising after such Person ceases to be a Manager. Any debts, obligations, or liabilities in damages to the Company of any Person who ceases to be a Manager shall be collectible by any legal means and the Company is authorized, in addition to any other remedies at law or in equity, to apply any amounts otherwise distributable or payable by the Company to such Person to satisfy such debts, obligations or liabilities.

6.8 Vacancies. In the event of the resignation of the Manager or the termination of the Manager's responsibilities pursuant to *Section 6.7* above, a successor Manager shall be elected by the affirmative vote, approval or consent of the Majority Vote of Membership Shares. The resignation or termination of a Manager who is also a Member shall not affect such Person's rights as a Member and shall not constitute his withdrawal as a Member (unless such Person is also expelled as a Member of the Company pursuant to *Section 13.8* hereof).

6.9 Right to Rely. Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Members as to (a) the identity of any Member, Manager or Officer; (b) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Manager or Officer, or which are in any other manner germane to the affairs of the Company; or (c) the identity of the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company. With the specific authorization of a resolution of the Members, signed or approved by the Members, the signature of the Manager or any Officer shall be sufficient to execute agreements and documents on behalf of the Company, including, without limitation, filings with regulatory authorities as shall be necessary for the conduct and management of the Company's business.

6.10 Limitation on Liability. Neither the Manager or any Officer nor any of their respective Affiliates shall be liable, responsible or accountable in damages or otherwise to the Company or the Members for any act or omission by any such Person performed in good faith pursuant to the authority granted to such Person by this Operating Agreement or in accordance with its provisions, and in a manner reasonably believed by such Person to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; *provided*, that such act or omission did not constitute Disabling Conduct.

ARTICLE 7 - RIGHTS, DUTIES AND LIMITATIONS OF MEMBERS

7.1 Condition Precedent to Membership. No Person may become a Member of the Company without first signing this Agreement or a counterpart signature page hereof. By signing this Agreement, each Member expressly agrees to be bound by all of the terms and conditions set forth in this Agreement.

7.2 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the Act, and other applicable law. In addition, all debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and, unless

otherwise provided in the Act, no Member shall be obligated personally for any such debt, obligation or liability solely by reason of being a Member. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Manager or any Member for liabilities of the Company.

7.3 Priority and Return of Capital. No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, or distributions of Net Cash from Operations or other Company Property *provided, however,* that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company. Net Losses shall be apportioned first to Donnelly Prehn up to his cost basis (including any loans to the Company), then to Michael Hodge up to his cost basis (including any loans to the Company) and thereafter to all Members in proportion to their Membership Interest.

7.4 Limitation on Management Rights. Except as otherwise specifically provided in this Agreement, all determinations, decisions, approvals and actions affecting the Company and its business and affairs shall be determined, made, approved, or authorized by the Manager. All Members shall only be entitled to vote on any matter submitted to a vote of the Members under the terms of this Agreement. Assignees shall not be entitled to vote on any matters. A Member who resigns or withdraws shall become an Assignee.

7.5 Acts Requiring a Majority Vote. All matters voted upon by the Members shall be determined by the Majority Vote of Membership Shares.

7.6 Pre-emptive Rights. Except as may be otherwise specifically provided in this Agreement, no Member shall have any pre-emptive or other right to make any additional Capital Contributions, including without limitation, in connection with the admission of any Additional Member pursuant to *Section 13.2* hereof.

7.7 Interest. No Member shall be entitled to receive interest on such Member's Capital Contributions or Capital Account balance.

ARTICLE 8 - MEETINGS OF MEMBERS

8.1 Annual Meeting. The annual meeting of the Members shall be held once a year on the date determined each year by a Majority Vote of Membership Shares at a location designated by the Members or on such other date as the Members determine, commencing with the calendar year 2003. The Manager shall prepare or cause to be prepared an agenda of matters to be considered by the Members at each annual meeting. The day fixed for the annual meeting shall not be a legal holiday in the State of Idaho. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Company.

8.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Majority Vote of Membership Shares. Business transacted at any special meeting will be limited to the purpose or purposes stated in the meeting Notice.

8.3 Notice of Meetings. A written Notice stating the date, time, and purpose(s) of the special meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, in the manner provided in *Section 20.8* hereof, to each Member of record entitled to vote at such meeting.

8.4 Waiver of Notice. Notice of meetings of Members may be waived if, at any time before or after the action is completed, each Member entitled to Notice or to participate in the action to be taken, submits a signed written waiver of the Notice requirements, or if such requirements are waived, in such other manner permitted by applicable law. Neither the business to be transacted at, nor the purpose of, the meeting need be specified in the written waiver of Notice. Attendance at any meeting by a Member (in person or by proxy) will result in both of the following:

(a) Waiver of objection to lack of Notice or defective Notice of the meeting, unless the Member, at the beginning of the meeting or upon the Member's arrival, objects to the holding of the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting; and

(b) Waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting Notice, unless the Member objects to considering the matter when it is presented and does not thereafter vote for or assent to any action taken at the meeting regarding such matter.

8.5 Meeting of all Members. If all of the Members shall meet at any time and place, and all Members consent to the holding of a meeting at such time and place, such meeting shall be valid without call or Notice, and lawful action may be taken at any such meeting.

8.6 Record Date. For the purpose of determining Members entitled to vote at any meeting of Members or any adjournment thereof, or Members or Assignees entitled to receive payment of any Distributions of Net Cash from Operations or other Company Property, or in order to make a determination of Members or Assignees for any other purpose, the date on which Notice of the meeting is deemed delivered or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members and Assignees. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this *Section 8.6*, such determination shall apply to any adjournment thereof.

8.7 Quorum. Members representing a Majority Vote of Membership Shares present in person or represented by proxy shall constitute a quorum at any meeting of the Members. Regardless of whether a quorum is present at any such meeting, the Members present or represented at such meeting may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further Notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a Notice of the adjourned meeting shall be given to each Member of record. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Membership Shares whose absence would cause less than a quorum.

8.8 Manner of Acting. If a quorum is present, the affirmative vote of a Majority Vote of Membership Shares shall be the act of the Members as to any matter submitted to a vote or requiring the consent of the Members.

8.9 Proxies. A Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize other persons to act for such Member by proxy. Each proxy shall be in writing and signed by the Member or the Member's authorized Representative. Such proxy shall be filed with the Company. No proxy shall be valid after six (6) months from the date of its execution, unless otherwise provided in the proxy.

8.10 Telephonic Attendance. Members may participate in any meeting of the Members with the same effect as being present in person by means of conference telephone or similar communications equipment through which all persons participating in the meeting may communicate with the other participants. A Member must be permitted to participate in a meeting by that means if the Member so requests. All participants shall be advised of the communications equipment and the names of the participants in the conference shall be divulged to all participants. Participation in a meeting pursuant to this *Section 8.10* constitutes presence in person at such meeting.

8.11 Action by Written Consent of Members Without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without Notice and without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members having not less than the minimum

number of Membership Shares that would be necessary to take the action at a meeting at which the holders of all Membership Shares entitled to vote on the action were present and voted. In no instance where action is authorized by written consent shall a meeting of the Members be called or Notice be given; *provided, however*, a copy of the action taken by written consent shall be filed with the records of the Company. Any action taken under this *Section 8.11* shall be effective upon the date of the latest signature thereon, unless the consent specifies a different effective date. Reasonably prompt Notice of any action taken without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to Notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of Members to take the action were obtained. Written consent by the Members pursuant to this *Section 8.11* shall have the same force and effect as a vote of such Members held at a duly held meeting of the Members and may be stated as such in any document.

8.12 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the presiding officer shall order or any Member shall demand that voting be by written ballot.

8.13 No Cumulative Voting. No Members shall be entitled to cumulative voting in any circumstance.

ARTICLE 9 - CAPITAL CONTRIBUTIONS

9.1 Initial Contributions. Each Initial Member shall make the Capital Contribution described for that Member on **Schedule 1** at the time and on the terms specified on **Schedule 1** and shall perform that Member's Commitment and shall receive that number of Membership Shares described on **Schedule 1**. If no time for the Capital Contribution is specified, the Capital Contribution shall be made at such time as the Initial Member signs this Agreement or a counterpart signature page hereto.

9.2 Additional Member Contributions. Each Additional Member shall make the Capital Contribution to which such Member has agreed, at the time or times and upon the terms to which the Additional Member has agreed in its Subscription Agreement, as provided in *Section 13.2* hereof. Any such Capital Contributions, and the name and address of any Additional Member making such Capital Contribution shall be added to **Schedule 1**, along with such Additional Member's number of Membership Shares and Sharing Ratio.

9.3 Additional Capital Contributions. In addition to the Capital Contributions set forth on **Schedule 1**, Members may determine from time to time through a Majority Vote of Membership Shares that additional Capital Contributions are needed to enable the Company to conduct and operate its business. Such additional Capital Contributions shall be a Commitment of each Member, subject to the remedies set forth in *Section 9.4* below. Upon the Members making such a determination, the Manager shall give Notice to all Members at least fifteen (15) Business Days prior to the date on which such Commitment is due. Such notice shall set forth the aggregate amount of and purpose for which such additional Capital Contributions are needed, the amount of each Member's Commitment, and the date by which the Members are required to contribute their additional Capital Contributions. Each Member's Commitment shall be the Member's proportionate share of the aggregate additional Capital Contribution, based upon the Member's Sharing Ratio.

9.4 Enforcement of Commitments. In the event any Member (a "Delinquent Member") fails to perform the Member's Commitment, as set forth in **Schedule 1** or in its Subscription Agreement, or fails to make any additional Capital Contribution as provided in *Section 9.3*, as applicable, the Manager shall give the Delinquent Member a Notice of the failure to meet the Commitment. If the Delinquent Member fails to perform the Commitment (including the payment of any costs associated with the failure to comply with the Commitment and interest on such obligations at the Default Interest Rate) within ten (10) Business Days of the giving of the Notice, the Company may take such action, including but not limited to, enforcing the Commitment in a court of appropriate jurisdiction in the state in which the Principal Office is located. Each Member expressly agrees to the exclusive jurisdiction of such courts, but only for the enforcement of Commitments. The Members may elect to allow the other Members to contribute the deficiency amount of the Commitment in proportion to each such Member's

Sharing Ratios, with those Members who contribute ("Contributing Members") contributing additional amounts equal to any amount of the Commitment not contributed by the Delinquent Member. The Contributing Members shall be entitled to treat such additional amounts contributed pursuant to this *Section 9.4* as a loan from the Contributing Members to the Delinquent Member, bearing interest at the Default Interest Rate and secured by the Delinquent Member's Membership Interest in the Company. Until they are fully repaid, the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been otherwise entitled. Notwithstanding the foregoing, no Commitment or other obligation to make an additional Capital Contribution may be enforced by a creditor of the Company or other Person other than the Company, unless the Delinquent Member expressly consents to such enforcement or to the assignment of the obligation to such creditor.

9.5 Loans by Members, Manager(s) and their Affiliates. In the event the Company does not have sufficient cash to pay its obligations, a Member, a Manager or any Affiliate thereof, with the consent of a Majority Vote of Membership Shares, may advance all or part of the needed funds to or on behalf of the Company. If more than one Member wishes to advance funds to the Company as contemplated by this *Section 9.5*, the Members shall advance such funds in proportion to their relative Sharing Ratios. An advance pursuant to this *Section 9.5* shall constitute a loan from that Person to the Company, and shall not constitute a Capital Contribution. Advances made pursuant to this *Section 9.5* may, and, if requested by the lending Person or Persons, shall be, evidenced by a promissory note from the Company to the lending Person(s) bearing a non-usurious floating rate of interest equal to the Prime Rate plus 6%, which shall be adjusted on the first day of each calendar month for as long as the loan is outstanding, based on the Prime Rate in effect on the Business Day before the first day of such month. "Prime Rate" means the prime rate (or base rate) reported in the "Money Rates" column or section of *The Wall Street Journal* as being the base rate on corporate loans at larger U.S. money center banks on the first date on which *The Wall Street Journal* is published in each month. In the event *The Wall Street Journal* ceases publication of the Prime Rate, then the "Prime Rate" shall mean the "prime rate" or "base rate" announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank). In the event that bank discontinues the practice of announcing that rate, "Prime Rate" shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers. The Company shall not be permitted to make any current Distributions to its Members, as contemplated in *Section 11.2(a)* hereof, unless and until all loans pursuant to this *Section 9.5* have been repaid in full.

ARTICLE 10 - CAPITAL ACCOUNTS AND ALLOCATIONS

10.1 Capital Accounts.

(d) Establishment and Maintenance. A separate Capital Account will be maintained for each Member and Assignee throughout the term of the Company in accordance with the rules of section 1.704-1(b)(2)(iv) of the Regulations. Each Member's and Assignee's Capital Account will be *increased* by (1) the amount of money contributed by such Person to the Company; (2) the fair market value of property contributed by such Person to the Company (net of liabilities secured by such contributed property subject to which the Company is considered to assume or take such property, as provided in section 752 of the Code); (3) allocations to such Member or Assignee of Net Profits; (4) any items in the nature of income and gain that are specially allocated to the Member or Assignee pursuant to this Agreement; and (5) allocations to such Member or Assignee of income and gain exempt from federal income tax. Each Member's or Assignee's Capital Account will be *decreased* by (1) the amount of money distributed to such Person by the Company; (2) the fair market value of Company Property distributed to such Person by the Company (net of liabilities secured by such distributed Property subject to which such Person is considered to assume or take such property, as provided in section 752 of the Code); (3) the amount of Net Loss and items of loss, deduction and expense that are specially allocated to the Member or Assignee pursuant to this Agreement; and (4) any other decreases required by the Regulations. In the event of a permitted Transfer of a Membership Interest or of Economic Rights in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Rights.

(e) **Compliance With Regulations.** The manner in which Capital Accounts are to be maintained pursuant to this *Section 10.1* is intended to comply with the requirements of section 704(b) of the Code and the Regulations promulgated thereunder. If in the opinion of the Company's legal counsel or accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this *Section 10.1* should be modified in order to comply with section 704(b) of the Code and the Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this *Section 10.1*, the Tax Matters Partner shall modify the method in which Capital Accounts are maintained; *provided, however*, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

10.2 Allocations to Capital Accounts.

(a) **General Rule.** Except as provided in this Agreement, Net Profit (and items thereof) and Net Loss (and items thereof) for any Fiscal Year shall be allocated among the Members in a manner such that if the Company were dissolved, its assets sold for their book value, its affairs wound up and its remaining assets (after payment of its liabilities) distributed to the Members in accordance with their respective positive Capital Account balances immediately after making such allocation, such Distributions would, as nearly as possible, be equal (proportionately) to the amount of the Distributions that would be made pursuant to *Article 11* hereof. The Tax Matters Partner may make such other assumptions (whether or not consistent with the foregoing) as it deems necessary or appropriate in order to effectuate the intended economic sharing arrangement of the Members as reflected in *Article 11* of this Agreement.

(b) **Regulatory and Related Allocations.** Notwithstanding any other provision in this Agreement to the contrary, the following special allocations will be made in the following order:

(i) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with section 1.704-2(g) of the Regulations. Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with section 1.704-2 of the Regulations. This *Section 10.2(b)(i)* is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(ii) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations or distributions described in sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations with respect to such Member's Capital Account, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible; *provided*, that an allocation pursuant to this *Section 10.2(b)(ii)* shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Section 10.2* have been tentatively made as if this *Section 10.2(b)(ii)* were not in this Agreement. This *Section 10.2(b)(ii)* is intended to constitute a "qualified income offset" within the meaning of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(iii) **Nonrecourse Deductions.** Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Members in accordance with their respective Capital Accounts.

(iv) **Gross Income Allocation.** In the event any Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Member's Adjusted Capital Account Deficit as quickly as possible; *provided*, that

an allocation pursuant to this *Section 10.2(b)(iv)* shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Section 10.2* (other than *Section 10.2(b)(ii)*) have been tentatively made as if this *Section 10.2(b)(iv)* were not in this Agreement.

(v) Loss Allocation Limitation. No allocation of Net Loss (or items thereof) shall be made to any Member to the extent such allocation would create or increase an Adjusted Capital Account Deficit with respect to such Member.

(c) Regulatory Allocations. The allocations set forth in this *Section 10.2* (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations under section 704 of the Code. Notwithstanding any other provision of this *Article 10* (other than the Regulatory Allocations), it is the intent of the Members that the Regulatory Allocations shall be taken into account in allocating other Company items of income, gain, loss, deduction and expense among the Members so that, to the extent possible, the net amount of such allocations of other Company items and the Regulatory Allocations shall be equal to the net amount that would have been allocated to the Members pursuant to this *Section 10.2* if the Regulatory Allocations had not been made.

(d) Section 754 Adjustments. Pursuant to section 1.704-1(b)(2)(iv)(m) of the Regulations, to the extent an adjustment to the adjusted tax basis of any Company asset under sections 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(e) Transfer of or Change in Membership Interests. The Tax Matters Partner is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation and/or special allocation of items of Company income, gain, loss, deduction and expense with respect to a newly issued Membership Interest, a transferred Membership Interest or transferred Economic Rights or a redeemed Membership Interest. A transferee of a Membership Interest or Economic Rights shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred Membership Interest.

(f) Organization Expenses. At the request of a the Members through a Majority Vote of Membership Shares, the Tax Matters Partner shall allocate Organization Expenses (and, to the extent necessary, any other items in lieu thereof) to the Capital Accounts of the Members so that, as nearly as possible, the cumulative amount of such organization expenses (and such other items in lieu thereof) allocated with respect to each Membership Interest is the same amount.

(g) Allocation Periods and Unrealized Items. Subject to applicable Regulations and notwithstanding anything expressed or implied to the contrary in this Agreement, the Tax Matters Partner may determine allocations to Capital Accounts based on an annual, quarterly or other period and/or on realized and unrealized net increases or net decreases (as the case may be) in the fair market value of Company Property.

10.3 Tax Allocations.

(a) Items of Company income, gain, loss, deduction and expense shall be allocated, for federal, state and local income tax purposes, among the Members in the same manner as Net Profit (and items thereof) and Net Loss (and items thereof) of which such items are components were allocated pursuant to *Section 10.2* above; *provided*, that solely for federal, state and local income tax purposes, allocations shall be made in accordance with section 704(c) of the Code and the Regulations promulgated thereunder, to the extent so required thereby.

(b) Allocations pursuant to this *Section 10.3* are solely for federal, state and local tax purposes

and shall not affect, or in any way be taken into account in computing, any Member's or Assignee's Capital Account or share of Net Profit (and items thereof) or Net Loss (and items thereof).

(c) The Members are aware of the tax consequences of the allocations made by this *Section 10.3* and hereby agree to be bound by the provisions of this *Section 10.3* in reporting their shares of items of Company income, gain, loss, deduction and expense.

10.4 Determination of Tax Matters Partner. All matters concerning the computation of Capital Accounts, the allocation of Net Profit (and items thereof) and Net Loss (and items thereof), the allocation of items of Company income, gain, loss, deduction and expense for tax purposes, the making of revocations of elections and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Tax Matters Partner, with the affirmative vote, consent or approval of a Majority Vote of Membership Shares. Such determination shall be final and conclusive as to all the Members. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the Tax Matters Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Members as reflected in *Article 11* below, the Tax Matters Partner may make such modification.

ARTICLE 11- DISTRIBUTIONS

11.1 Withdrawals and Distributions in General. No Member shall have the right to withdraw or demand Distributions of any amount in the Member's Capital Account, except as expressly provided in this *Article 11*.

11.2 Current and Mandatory Tax Distributions.

(a) **Current Distributions**. Net Cash from Operations shall be distributed on a quarterly basis in accordance with each Member's Membership Share.

(b) **Mandatory Tax Distributions.** The Company shall distribute to the Members and Assignees, in accordance with their Sharing Ratios, from any Net Cash from Operations, an amount sufficient to pay the federal and state income taxes on any income for such Fiscal Year that passes through the Company to the Members and Assignees, under the applicable provisions of the Code (net of any tax benefit produced for the Members and Assignees by the Company's losses, deductions and credits for the same Fiscal Year). Such taxes shall be determined conclusively by presuming that (a) all taxable income that passes through to a Member or Assignee will be taxed at the maximum federal rate (without regard to exemptions or phase-outs of lower tax rates) and at the maximum State of Idaho rate at which income of any natural person or Entity, as applicable, can be taxed in the calendar year that includes the last day of the Fiscal Year and (b) losses, deductions and credits produce tax benefits using the same tax rates. The Company shall make any such mandatory tax Distributions in a timely manner at such intervals as will allow the taxes (including, without limitation, estimated tax payments) attributable to the income passed through the Company to any Member or Assignee to be paid when due. If the aggregate amount of such Distributions under this *Section 11.2(b)* exceeds such Member's or Assignee's actual federal and state income taxes for such year, the Company's obligation to make further Distributions to the Members and Assignees pursuant to this *Section 11.2(b)* shall be reduced by the amount of such excess until such excess has been fully deducted from such Distribution.

11.4 Liquidating Distributions. Notwithstanding the other provisions of this *Article 11*, Distributions in liquidation of the Company shall be made to each Member and Assignee in the manner set forth in *Section 14.2* of this Agreement.

11.4 Distributions in Kind. The Company may make Distributions in kind if a Majority Vote of Membership Shares determines a disposition of assets at the time of Distribution would be in the best interests of the

Members. For all purposes of this Agreement, (i) any Company Property (other than cash) that is distributed in kind to one or more Members with respect to a Fiscal Year (including any in-kind Distribution upon the dissolution and winding-up of the Company) shall be deemed to have been sold for cash (in U.S. dollars) equal to its fair market value (net of any relevant liabilities secured by such Property); (ii) the unrealized gain or loss inherent in such Company Property shall be treated as recognized gain or loss for purposes of determining Net Profit or Net Loss; (iii) such gain or loss shall be allocated to the Member's Capital Accounts pursuant to *Article 10* for such Fiscal Year; and (iv) such in-kind Distribution shall be made after giving effect to such allocation pursuant to *Article 10*.

11.5 Withholding. Notwithstanding anything expressed or implied to the contrary in this Agreement, the Manager is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any federal, state, local and foreign withholding requirement with respect to any payment, allocation or Distribution by the Company to any Member, Assignee or other Person. All amounts so withheld, and, in the manner determined by the Manager, amounts withheld with respect to any payment, allocation or distribution by any Person to the Company, shall be treated as Distributions to the Members and Assignees under the applicable provisions of this Agreement. If any such withholding requirement with respect to any Member or Assignee exceeds the amount distributable to such Member or Assignee under this Agreement, or if any withholding requirement was not satisfied with respect to any item previously allocated, paid or distributed to such Member or Assignee, such Member, or Assignee or any successor or assignee with respect to such Person, hereby indemnifies and agrees to hold harmless the Tax Matters Partner, the Manager, the other Members and the Company for such excess or amount or such amount required to be withheld, as the case may be, together with any applicable interest, additions or penalties thereon.

11.6 Restrictions on Distributions. The foregoing provisions of this *Article 11* to the contrary notwithstanding, no Distribution shall be made (a) if such Distribution would violate the Act, or any other law, rule, regulation, order or directive of any Governmental Body then applicable to the Company; (b) other than mandatory tax-related Distributions pursuant to *Section 11.2(b)* above, if any, to the extent the Manager determines, with the affirmative vote, consent or approval of the Majority Vote of Membership Shares, that any amount otherwise distributable should be retained by the Company to pay, or to establish Reserves for the payment of, any liability or obligation of the Company, whether liquidated, fixed, contingent or otherwise, or to hedge an existing investment; or (c) to the extent that the Manager determines, with the affirmative vote, consent or approval of the Majority Vote of Membership Shares, that the Net Cash from Operations available to the Company is insufficient to permit such Distribution.

ARTICLE 12 - TRANSFER OF INTERESTS

12.1 Transfers. No Member or Assignee (in each case, the "Transferor") may Transfer all or any portion of such Person's interest in the Company, whether the Transferor's Membership Interest or Economic Rights (in each case, an "Interest"), ***unless*** the Transfer is a Permitted Transfer as described in *Section 12.2* below. Any purported Transfer, other than in strict accordance with this *Article 12*, shall be null and void *ab initio*, and of no force or effect whatsoever against the Company, any other Member, any creditor of the Company or any claimant against the Company; *provided, however*, that, *if* the Company is required to recognize a Transfer not permitted under *Section 12.2* (or if a Majority Vote of the Remaining Membership Shares, in their discretion, elect to recognize a Transfer that is not so permitted), the Interest transferred shall be strictly limited to the Transferor's Economic Rights. The provisions of this *Section 12.1* and the provisions of *Section 12.4* below shall not apply to Transfers occurring with respect to a Financing Event.

12.2 Permitted Transfers.

(a) Subject to the conditions and restrictions set forth in *Section 13.4* below, each of the following Transfers shall be a "Permitted Transfer" for purposes of this Agreement:

(i) all Members who are natural Persons may Transfer all or any part of their Interest by way of gift for estate planning purposes to any member of their Immediate Family or to any trust, partnership or similar estate planning vehicle for the benefit of any such Immediate Family member or members;

(ii) all Members who are not natural Persons may transfer all or part of their Interest to their respective equity holders;

(iii) all Members may Transfer all or any part of their Interest to another Member; and

(iv) all Members may transfer all or any part of their Interest if a Majority Vote of Membership Shares shall have approved the Transfer, and the Transferor has complied with the Right of First Refusal imposed by *Section 12.4* below.

(b) Notwithstanding any provision of *Section 12.2(a)* to the contrary, any Assignee of a Permitted Transfer under *Section 12.2(a)* shall be admitted as a Substitute Member only in accordance with the provisions of *Section 13.3* hereof; *provided, however*, that (i) any current Member who receives a Permitted Transfer described in *Section 12.2(a)(iii)* above shall be automatically admitted as a Substitute Member with respect to the Interest transferred without any vote or other action of the Members pursuant to *Section 13.3*; and (ii) an Assignee of a Permitted Transfer described in *Section 12.2(a)(iv)* above that has been approved by a Majority Vote of Membership Shares shall, unless otherwise expressly provided in connection with such vote, be automatically admitted as a Substitute Member without a separate vote of the Members pursuant to *Section 13.3*.

12.3 Conditions to Permitted Transfers. Notwithstanding any provision of *Section 12.2* to the contrary, a Transfer shall not be permitted under this *Article 12* unless and until the following conditions are satisfied:

(a) The Transferor and Assignee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the Assignee to be bound by the terms and conditions of this Agreement. In all cases, the Company shall be reimbursed by the Transferor and/or Assignee for all costs and expenses that the Company reasonably incurs in connection with the Transfer.

(b) The Transferor and Assignee shall provide to the Company the Assignee's taxpayer identification number, sufficient information to determine the Assignee's initial tax basis in the Interest transferred and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any Distributions otherwise provided for in this Agreement with respect to any Interest transferred until it has received such information.

(c) If required by a Majority Vote of Membership Shares upon the advice of legal counsel, the Transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Members, that (i) the Transfer will not cause the Company to terminate for federal income tax purposes under section 708 of the Code; (ii) the Transfer will not cause the application to the Company, to any Company Property or to any of the Members of the rules of sections 168(g)(1)(B) and 168(h) of the Code (generally referred to as the "tax exempt entity leasing rules"); (iii) the Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940; and (iv) either the Interest transferred has been registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or the Transfer is exempt from all applicable registration requirements and will not violate any applicable laws regulating the transfer, issue and sale of securities.

(d) If the Assignee is to become a Substitute Member as a result of the Transfer, the provisions of *Section 13.3* shall have been complied with.

12.4 Right of First Refusal.

(a) Grant. The Company and the Members are hereby granted a right of first refusal (the "Right of First Refusal"), exercisable in connection with any proposed Transfer of an Interest (or portion thereof), except for any Permitted Transfers described in clauses (i), (ii) and (iii) of *Section 12.2(a)* above, or any Transfer associated with a Financing Event.

(b) Notice of Intended Transfer. In the event a Transferor desires to accept a bona fide third party offer for the Transfer of all or any part of the Transferor's Interest (the Interest subject to such offer being hereinafter referred to as the "Target Interest"), the Transferor shall promptly deliver to the Company and the other Members written notice (the "Transfer Notice") of the terms and conditions of the offer, including the purchase price and the identity of the third party offeror.

(c) Exercise of Right. For a period of thirty (30) days following receipt of the Transfer Notice (the "Company Exercise Period"), the Company shall have the right to purchase all of the Target Interest specified in the Transfer Notice upon the same terms and conditions described therein or upon terms and conditions which do not materially vary from those specified in the Transfer Notice. The determination as to whether the Company will exercise its Right of First Refusal shall be made by a Majority Vote of the Remaining Membership Shares. The Right of First Refusal shall be exercisable by the Company's delivery to the Transferor of written notice to that effect (the "Company Exercise Notice") prior to the expiration of the Company Exercise Period. If such right is not exercised by the Company within the Company Exercise Period, then the non-selling Members (the "Remaining Members") shall have the right, exercisable within thirty (30) days immediately following expiration of the Company Exercise Period (the "Member Exercise Period") to purchase all (but not less than all) of the Target Interest specified in the Transfer Notice upon the same terms and conditions described therein or upon terms and conditions which do not materially vary from those specified therein, with such right exercisable by those Remaining Members exercising such right giving the Transferor written notice to that effect (the "Member Exercise Notice") prior to the expiration of the Member Exercise Period (the Member Exercise Notice, together with the Company Exercise Notice, is referred to as the "Exercise Notice"). If more than one Remaining Member shall exercise its Right of First Refusal, the Remaining Members shall purchase the Target Interest in such proportion as they shall agree; and, absent such agreement, the Remaining Members shall purchase the Target Interest in proportion to their Sharing Ratios.

(d) Purchase of Target Interest. If the foregoing Right of First Refusal is exercised by the Company (which exercise must be approved by a Majority Vote of the Remaining Membership Shares, as provided above), or by the Remaining Members, then the Company or the Remaining Members, as appropriate, shall effect the purchase of the Target Interest, including payment of the purchase price therefor, on the same terms as specified in the Exercise Notice, and the Transferor shall deliver to the Company or the Remaining Members, as appropriate, the Membership Share Certificate(s), if any, representing the Target Interest to be purchased, each such Membership Share Certificate to be properly endorsed for Transfer. Should the purchase price specified in the Transfer Notice be payable in Property other than cash or evidences of indebtedness, the Company or the Remaining Members, as appropriate, shall have the right to pay the purchase price in the same form of Property or, at their option, in the form of cash equal in amount to the value of such Property. If the Transferor and the Company or the Remaining Members, as appropriate, cannot agree on such cash value, or on the value of the Property proposed to be used by the Company or the Remaining Members, as the case may be, within five (5) days after the Transferor's receipt of a relevant Exercise Notice, the valuation shall be made by an appraiser of recognized standing selected by the Transferor and the Company or the Remaining Members, as appropriate; or, if they cannot agree on such appraiser within the foregoing 5-day period, each party shall select an appraiser of recognized standing, and the two appraisers so selected shall select a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of the appraisal shall be shared equally by the Transferor and by the Company or the Remaining Members, as appropriate. The closing of the sale shall be held on the *later of* (i) the tenth (10^{th}) business day following delivery of the Exercise Notice, or (ii) the tenth (10^{th}) business day after the valuation shall have been finalized.

(e) Non-Exercise of Right. In the event that neither the Company Exercise Notice nor the Member Exercise Notice is given to the Transferor within the Company Exercise Period or the Member Exercise Period, as appropriate, the Transferor shall have a period of ninety (90) days thereafter in which to sell or otherwise Transfer the Target Interest to the third party offeror identified in the Transfer Notice on such terms and conditions (including, without limitation, purchase price) not more favorable to the third party offeror than those specified in the Transfer Notice; *provided, however*, that under no circumstances may any such sale or disposition be effected in contravention of the provisions of *Section 12.3* (and, if the Transfer is intended to result in the Assignee becoming a Substitute Member, in accordance with the provisions of *Section 13.3*). In the event the Transferor does not effect the Transfer of the Target Interest within the specified 90-day period, the Company's and Remaining Members' Rights of First Refusal shall continue to be applicable to any subsequent Transfer of the Target Interest by the Transferor.

ARTICLE 13 - ADDITIONAL MEMBERS; EVENTS OF DISSOCIATION; WITHDRAWALS

13.1 Admissions. No Person shall be admitted to the Company as an Additional Member or as a Substitute Member, except in accordance with *Section 13.2* or *Section 13.3*, respectively. Any purported admission which is not in accordance with this *Article 13* shall be null and void *ab initio*. Upon admission of any Additional or Substitute Member, or upon an Event of Dissociation with respect to any Member, the books and records of the Company, including, without limitation, **Schedule 1** hereto, shall be revised accordingly to reflect such admission or Event of Dissociation.

13.2 Admission of Additional Members. A Person shall become an Additional Member pursuant to the terms of this Agreement only if and when each of the following conditions is satisfied: (a) a Majority Vote of Membership Shares consent to such admission, and the terms and conditions thereof, including, without limitation, the nature and amount of the Capital Contribution to be contributed by such Person; (b) the Company receives a signed and completed Subscription Agreement and/or such other documents and instruments as may be necessary or appropriate in the opinion of counsel to the Company to confirm the agreement of such Person to become an Additional Member and to be bound by the terms and conditions of this Agreement; and (c) the Company receives such Person's Capital Contribution as so determined.

13.3 Admission of Assignee as Substitute Member. An Assignee of an Interest may be admitted as a Substitute Member and admitted to all rights of the Member who initially assigned the Interest, including without limitation, all Management Rights with respect thereto, only if and when each of the following conditions is satisfied:

(a) The Company receives such documents and instruments as may be necessary or appropriate in the opinion of counsel to the Company to confirm the agreement of such Person to become a Substitute Member and to be bound by the terms and conditions of this Agreement;

(b) Such Assignee shall have paid to the Company the amount determined by the Members to be equal to the costs and expenses incurred in connection with such Transfer, including, without limitation, costs incurred in preparing and filing such amendments to this Agreement as may be required;

(c) A Majority Vote of Membership Shares consents to such admission, which consent may be given or arbitrarily withheld in the sole and absolute discretion of each such Member;

(d) If required by the Members, such Assignee shall execute and swear to an instrument by the terms of which such Person acknowledges that the relevant Interest has not been registered under the Securities Act of 1933, or any applicable state securities laws, and covenants, represents and warrants that such Assignee acquired the relevant Interest for investment only and

not with a view to the resale or distribution thereof;

(e) If the Assignee is not a natural person of legal majority, the Assignee provides the Company with evidence reasonably satisfactory to counsel for the Company of the authority of the Assignee to become a Member and to be bound by the terms and conditions of this Agreement; and

(f) Such Assignee shall furnish the Company with such other similar information as the Members may reasonably request.

13.4 Rights and Obligations of Transferors and Assignors.

(a) A Transfer by any Transferor shall not itself dissolve the Company or entitle the Assignee to become a Substitute Member or exercise any rights of a Member, including, without limitation, any Management Rights, except in accordance with the provisions of *Section 13.3* above.

(b) Except as hereinafter provided, any Transfer of a Transferor's Interest, including, without limitation, any involuntary Transfer by operation of law or otherwise, shall eliminate the Transferor's power and right to vote (in proportion to the extent of the Interest transferred), on any matter submitted to the Members; and for voting purposes, such Interest shall not be counted as outstanding in proportion to the extent of the Interest transferred. A Transfer of a Transferor's Interest, however, shall not otherwise eliminate the Member's entitlement to any other Management Rights associated with the Member's interest, including, without limitation, rights to information.

(c) A Substitute Member shall have, to the extent of the Interest transferred, all the rights and powers, and shall be subject to all the restrictions and liabilities, of a Member, and shall be liable for any obligations of the Transferor to make Capital Contributions. Notwithstanding the admission of a Substitute Member, the Transferor shall not be released from any of the Transferor's liabilities and obligations to the Company outstanding as of the effective time of the Transfer solely as a result of the Transfer, including, without limitation, the Transferor's Commitment.

(d) An Assignee who is not admitted as a Substitute Member pursuant to *Section 13.3* shall be entitled only to the Economic Rights with respect to the Interest transferred, and shall have no Management Rights (including, without limitation, voting rights or rights to any information or accounting of the affairs of the Company or to inspect the books or records of the Company) with respect to the interest transferred. If the Assignee thereafter becomes a Substitute Member, the voting rights and all other Management Rights associated with the Interest transferred shall be restored and shall be held by the Substitute Member along with all Economic Rights with respect such Interest.

(e) If a court of competent jurisdiction charges an Interest in the Company with the payment of an unsatisfied amount of a judgment, to the extent so charged, the judgment creditor shall be treated as an Assignee; *provided*, that any such charge not satisfied within the 60-day period specified in *Section 13.6(c)* shall cause an Event of Dissociation thereunder.

13.5 Distributions and Allocations Regarding Transferred Interests. Upon any Transfer during any Fiscal Year made in compliance with the provisions of this Agreement, Net Profits and Net Losses and all other items attributable to such Interest for the Fiscal Year shall be divided and allocated between the Transferor and the Assignee by taking into account their varying interests during the Fiscal Year in accordance with section 706(d) of the Code, using any conventions permitted by law and selected by the Tax Matters Partner. All Distributions on or before the date of the Transfer shall be made to the Transferor and all Distributions thereafter shall be made to the Assignee.

13.6 Events of Dissociation. Each of the following events shall be an "Event of Dissociation" for purposes of this Agreement which shall terminate the continued membership in the Company of a Member affected thereby and which cause such Member or any successor in interest thereto to be deemed an Assignee for purposes of this Agreement with respect to any Interest in the Company held thereby, with the consequence that the Event of Dissociation will eliminate the power and right of such Member to vote on any matter submitted to the Members (and cause such Interest to not be counted as outstanding) unless and until the successor in interest, if any, holding such Interest is admitted as a Member in accordance with *Section 13.3* and the voting rights associated therewith are restored in accordance with *Section 13.4(d)*):

(a) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;

(b) The expulsion of a Member pursuant to *Section 13.8*;

(c) The Bankruptcy of a Member or the entry of a charging order against the Member's Interest in the Company that is not released or satisfied within 60 days;

(d) In the case of a Member acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(e) In the case of a Member that is a separate Entity other than a corporation, the dissolution and commencement of winding up of the separate Entity; or

(f) In the case of a Member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its charter.

13.7 Withdrawal. No Member has the power to withdraw voluntarily from the Company. A Member that purports to withdraw voluntarily from the Company prior to any dissolution of the Company shall be in breach of this Agreement, shall be liable to the Company for any Damages arising directly or indirectly from such purported withdrawal and shall not be entitled to any Distributions from the Company by reason of such withdrawal, including, without limitation, any distribution described in Section 53-630 of the Act. The provisions of this *Section 13.7* (other than the prohibition on Distributions, which shall apply in all circumstances) shall not apply to withdrawals resulting from any Event of Dissociation, including, without limitation, the death or adjudicated incompetence of a Member, *other than* an expulsion of a Member by the Members as provided in *Section 13.8* below.

13.8 Expulsion. A Member may be expelled from the Company upon a determination by a Majority Vote of Membership Shares (or by a court upon application of any Member) that the Member has been guilty of Disabling Conduct. An expelled Member shall be treated as having withdrawn voluntarily from the Company in breach of this Agreement on the date of the determination of expulsion by the Members or the court.

ARTICLE 14 - DISSOLUTION AND WINDING UP

14.1 Dissolution Events. The Company shall dissolve and commence winding up and liquidation upon the first to occur of any of the following (each, a "Dissolution Event"):

(a) Expiration of Term. Upon the expiration of the Term set forth in *Section 1.6* of this Agreement.

(b) Determination of Members. The affirmative vote, consent or approval of the Majority Vote of Membership Shares to dissolve, wind up and liquidate the Company.

(f) **Judicially**. The entry of a decree of judicial dissolution under Section 53-643 of the Act.

Notwithstanding anything in Section 53-642 of the Act to the contrary, to the maximum extent permitted by law, the Dissolution Events specified in this *Section 14.1* are the exclusive events that may cause the Company to dissolve, and the Company shall not dissolve prior to the occurrence of a Dissolution Event.

14.2 Liquidation and Termination. Upon the happening of any of the Dissolution Events specified in *Section 14.1*, a Majority Vote of Membership Shares shall appoint a liquidator (the "Liquidator"), who may or may not be an agent or Representative of a Member. The Liquidator shall proceed diligently to wind up the affairs of the Company and make final Distributions as provided in this Agreement and in the Act. The costs of liquidation shall be borne as a Company expense; in addition, any Member who performs more than *de minimis* services in completing the winding up and termination of the Company pursuant to this *Article 14* shall be entitled to receive reasonable compensation for services performed. Until final Distribution, the Liquidator shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the Liquidator are as follows:

(g) **Accounting**. As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(h) **Notice**. The Liquidator shall cause the notice described in Section 53-648 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 53-648.

(i) **Winding Up, Liquidation and Distribution of Assets**. The Liquidator shall sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members and Assignees in kind) and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

(i) ***First***, payment of creditors, including Members and their Affiliates who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, other than liabilities for Distributions to Members;

(ii) ***Second***, to establish any Reserves that the Liquidator deems reasonably necessary for contingent or unforeseen obligations of the Company and, at the expiration of such period as the Liquidator shall deem advisable, the balance then remaining in the manner provided in subparagraph (iii) below;

(iii) ***Thereafter***, by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation), to the Members and Assignees in accordance with the positive balances in their Capital Accounts, after giving effect to all Capital Contributions, Distributions and allocations for all periods.

(j) **Purchase of Company Assets**. Except as provided in *Section 14.2* above, any Member shall have the right to bid on any sales of assets of the Company made pursuant to this *Article 14*.

14.4 Allocation of Net Profit and Loss in Liquidation. The allocation of Net Profit, Net Loss and other items of the Company following the date of dissolution, including but not limited to gain or loss upon the sale of all or substantially all of the Company's assets, shall be determined in accordance with the provisions of *Article 10* and shall be credited or charged to the Capital Accounts of the Members and Assignees in the same manner as Net Profit, Net Loss, and other items of the Company would have been credited or charged if there were no dissolution and liquidation.

14.5 No Obligation to Restore Negative Capital Account Balance on Liquidation. Notwithstanding anything seemingly to the contrary in this Agreement, upon a liquidation within the meaning of section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member or Assignee has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member or Assignee shall have no obligation to make any Capital Contribution to the Company, and the negative balance of such Person's Capital Account shall not be considered a debt owed by such Member or Assignee to the Company or to any other Person for any purpose whatsoever.

14.6 Articles of Dissolution. On completion of the distribution of Company assets as provided in this *Article 14*, the Company shall be deemed terminated, and the Liquidator (or such other Person or Persons as the Act may require or permit) shall file Articles of Dissolution with the Secretary of State of the State of Idaho, cancel any other filings made, and take such other actions as may be necessary to terminate the Company in accordance with the provisions of the Act.

14.7 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution of the Company, each Member and Assignee shall look solely to the assets of the Company for the return of its Capital Contributions. If the Company Property remaining after the payment or discharge of liabilities of the Company is insufficient to return the Capital Contributions of the Members and Assignees, no Member or Assignee shall have recourse against any other Member or Assignee.

14.8 No Action for Dissolution. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by *Section 14.1*. This Agreement has been drafted to provide fair treatment of all parties and equitable payment in liquidation of the Company. Accordingly, except for their duties to liquidate the Company as required by this *Article 14*, each Member hereby waives and renounces its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this *Section 14.8* shall be monetary damages only (and not specific performance), and the Damages may be offset against Distributions by the Company to which such Member would otherwise be entitled.

ARTICLE 15 - EXCULPATION AND INDEMNIFICATION

15.1 Definitions. For purposes of this *Article 15*, each of the following terms shall have the meaning ascribed to such term in this *Section 15.1*.

(a) Covered Person. The term "Covered Person" means and includes any of the following Persons: (i) any former, current or future Member or Assignee; (ii) any former, current or future Tax Matters Partner; (iii) any former, current or future Manager; or (iv) any former, current or future Officer, affiliate, trustee, trustor, beneficiary, member, manager, partner, shareholder, director, employee, representative, legal counsel or agent of the Company, any Affiliate of the Company or any of the Persons listed in clauses (i), (ii) or (iii).

(b) Proceeding. The term "Proceeding" means and includes any threatened, pending or completed demand, mediation, arbitration, suit, cause of action, action or other proceeding, whether civil, criminal, administrative or investigative in nature, to which a Covered Person is a party or in which a Covered Person is otherwise involved. Without limiting the generality of the foregoing, "Proceeding" shall expressly include: (i) any Proceeding brought by the Company against such Covered Person or brought in the right of the Company by any Person against such Covered Person; and (ii) any Proceeding brought to establish any right to exculpation or indemnification under this *Article 15*.

(c) **Claim**. The term "Claim" means and includes any claim, loss, damages, liability, loss, judgment, fine, settlement, compromise, award, cost, expense or other amount arising from or otherwise related to any Proceeding, including, without limitation, any attorneys' fees, costs and disbursements, expert witness fees or related costs incurred in such Proceeding and any costs or expenses incurred in connection or otherwise related to such Covered Person's establishment of a right to exculpation or indemnification in such Proceeding under this *Article 15*.

15.2 Exculpation. Notwithstanding any provision of this Agreement to the contrary, whether express or implied, or any obligation or duty at law or in equity, and except to the extent otherwise explicitly provided by any other agreement or by applicable law, no Covered Person shall be liable to the Company or to any other Person for any act or omission related to the Company and the conduct of its business, this Agreement, any related document, or any transaction or investment contemplated by this Agreement or any related document to the extent that: (a) such act was committed or such omission was made (i) in good faith by such Covered Person, and (ii) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of such Covered Person's authority, as granted pursuant to this Agreement; and (b) such act or omission did not constitute Disabling Conduct.

15.3 Indemnification. To the fullest extent permitted by applicable law, except as otherwise explicitly provided by any other agreement, the Company hereby indemnifies each Covered Person against and hereby agrees to defend and protect such Covered Person against and to hold such Covered Person free and harmless from any and all Claims arising from or otherwise related to such Covered Person's act or omission to the extent that (a) such act or omission was related to the Company or its business, this Agreement, any related document, or any transaction or investment contemplated by this Agreement or any related document; (b) such act was committed or such omission was made (i) in good faith by such Covered Person, and (ii) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of such Covered Person's authority, as granted pursuant to this Agreement; and (c) such act or omission did not constitute Disabling Conduct.

15.4 Limit on Indemnification. Notwithstanding *Section 15.3* hereof to the contrary, no Covered Person shall be entitled to indemnification under *Section 15.3* in any Proceeding to the extent that such Covered Person initiated the Proceeding, unless (a) the Proceeding was brought to enforce the Covered Person's rights to indemnification hereunder, or (b) the Members authorized, directed, consented to, approved or ratified the bringing of the Proceeding, by formal resolution or other action.

15.5 Advanced Expenses. Costs and expenses actually and reasonably incurred by a Covered Person in any Proceeding shall be paid by the Company in advance of final disposition of the Proceeding upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to exculpation under *Section 15.2* hereof and indemnification under *Section 15.3* hereof.

15.6 Tender of Defense. Any Covered Person may tender the defense of any Proceeding or make demand for exculpation or indemnification under this *Article 15* by providing Notice in accordance with this Agreement to the Manager and the Members. Upon any tender of defense, the Company shall appoint such legal counsel for the Covered Person as the Covered Person may reasonably approve and, subject to the terms, conditions and other provisions of this *Article 15*, shall pay all attorneys' fees and related costs incurred by the Covered Person to such legal counsel directly and in a timely manner.

15.7 No Presumption. The termination of any Proceeding by a judgment, decree, order, injunction, settlement, compromise, award, conviction or upon a plea of *nolo contendere* (or its equivalent) shall not, of itself, create a presumption that (a) a Covered Person did not act in good faith; or (b) that the Covered Person acted in a manner which (i) was not in the Company's best interests, (ii) was not within the scope of the Covered Person's authority, or (iii) the Covered Person did not reasonably believe to be in the Company's best interests within the scope of the Covered Person's authority as provided in this Agreement.

15.8 Successful Defense. To the extent that any Covered Person is successful on the merits in defense of any Proceeding, the Covered Person shall be deemed and considered entitled to exculpation under *Section 15.2* hereof and indemnification under *Section 15.3* hereof.

15.9 Standard of Conduct. The determination that any Covered Person has met or has not met the applicable standard of conduct required by *Section 15.2* or *Section 15.3* hereof may be made by a finding, judgment, order or decree of any court or other presiding authority in any Proceeding, whether upon application of the Company or of such Covered Person (regardless of whether the Company opposes such application).

15.10 Nonexclusive Remedy. The rights and remedies under this *Article 15* shall not be deemed or considered exclusive of or (in any way) diminish, limit, restrict, alter or otherwise adversely affect any other right to exculpation or to indemnification or to any other right or remedy available to any Covered Person under any agreement, any vote of the Members, any applicable law or otherwise, both with respect to acts or omissions in an official capacity and acts or omissions in a separate capacity while holding such official capacity.

15.11 Survival of Rights. The rights and remedies under this *Article 15* shall survive and continue for any Person which has ceased to be a Covered Person for any act committed or omission made while a Covered Person, and shall inure to the benefit of the successors and assigns, heirs, executors, and administrators of such Covered Person.

15.12 Amendments. Any repeal or modification of this *Article 15* shall not adversely affect any right or remedy of a Covered Person pursuant to this *Article 15*, including the right to indemnification or to the advancement of expenses of the Covered Person existing at the time of such repeal or modification with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE 16 - AMENDMENTS

16.1 Agreement May Be Modified. This Agreement may be modified as provided in this *Article 16* (as the same may, from time to time, be amended). No Member shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement in accordance with this *Article 16*.

16.2 Amendment or Modification of Agreement. This Agreement may be amended or modified from time to time only by a written instrument adopted by the Majority Vote of Membership Shares; *provided, however*, that any amendment that would change a required voting percentage for approval of any matter or a Member's voting rights or any amendment that would alter the interest of one or more Members in Net Profits, Net Losses, similar items or any Company Distributions shall require the affirmative vote of all Members then entitled to vote.

ARTICLE 17 - CONFIDENTIALITY

17.1 Treatment of Confidential Information. Each Member acknowledges that during the term of this Agreement, it may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, including, but not limited to, information concerning financial instruments, technical research data and literature, investment and trading models and techniques, records, and all other know-how, trade marks, trade secrets, business plans and methods, expansion plans, strategic plans, marketing plans, contracts, or other business documents which the Company treats as confidential and proprietary trade secrets (collectively "Confidential Information"). Each Member expressly agrees that all such Confidential Information is and shall remain the property of the Company; and no Member shall use such Confidential Information in any manner detrimental to the best interests of the Company, including but not limited to activities that are competitive with the Company, nor shall any such Confidential Information be disclosed to any third party without the express written consent of the Members. Upon expiration or other termination of a Member's interest in the Company, that Member may not take or use any of the Confidential Information belonging to the Company unless specifically authorized by this Agreement or otherwise agreed in writing by the Members, and that Member shall promptly return

to the Company all Confidential Information in that Member's possession or control.

17.2 Remedies. The parties hereto acknowledge and agree that a breach of the covenants or restrictions set forth in this *Article 17* will cause irreparable damage to the Company, the exact amount of which will be difficult to ascertain, and the remedies at law for any such breach will be inadequate. Accordingly, each Member agrees that if it breaches any such covenants or restrictions, then the Company shall be entitled to injunctive relief and any other available equitable or legal relief. The foregoing remedies shall be cumulative and non-exclusive, and in addition to any and all other remedies that may be available to the Company, and each Member hereby waives any security or bond requirement in connection with the Company or such other Member(s), as applicable, obtaining such injunctive or other equitable relief. The provisions of this *Article 17* shall survive the termination of this Agreement.

17.3 Applicability. For purposes of this *Article 17*, "Confidential Information" does not include information that: (a) is or becomes generally available to the public through no breach of this Agreement; (b) is already known to the receiving party at the time of disclosure, as evidenced in writing; (c) becomes known to the receiving party by disclosure from a third party who has a lawful right to disclose the information; or (d) is independently developed by employees or agents of the Receiving Party who the Receiving Party can demonstrate did not have access to Confidential Information.

ARTICLE 18 - DEFINITIONS

18.1 Definitions. For purposes of this Agreement, unless the context clearly indicates otherwise, capitalized terms used in this Agreement shall have the meanings given such terms below:

"Act" shall mean the Idaho Limited Liability Company Act, Idaho Code §§ 53 *et seq.*, and all amendments to the Act.

"Additional Member" shall mean a Member, other than an Initial Member or a Substitute Member, who has acquired a Membership Interest (including both Economic Rights and Management Rights) from the Company after the date of this Agreement, as shown on the books and records of the Company and on **Schedule 1** hereto.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) The Capital Account shall be increased by any amounts such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(b) The Capital Account shall be decreased by the items described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Affiliate" shall mean, with respect to any Person, any of the following: (a) any person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting interests of such Person: (c) any officer, director or manager of such Person; (d) any Person that is an officer, director, manager, trustee or holder of 10% or more of the voting interests of any Person described in clauses (a) through (c) of this definition. For purposes of this definition, the term "controls," "is controlled by" or "is under common control with" shall mean the possession, direct or indirect, of the

power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this Operating Agreement including all amendments adopted in accordance with this Agreement and the Act, and together with any exhibits, schedules, attachments or annexes hereto from time to time, as the context requires.

"Articles" shall mean the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State of Idaho.

"Assignee" shall mean an owner of Economic Rights who has not been admitted as a Substitute Member, including an owner of Economic Rights pursuant to a Transfer permitted under *Article 12* or an owner of Economic Rights of a Member whose membership in the Company has been terminated by reason of an Event of Dissociation.

"Bankruptcy" shall mean, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy.

"Business Day" shall mean any day other than Saturday, Sunday or a legal holiday observed in the State of Idaho.

"Capital Account" shall mean the account maintained for a Member or Assignee determined in accordance with *Article 10*.

"Capital Contribution" shall mean, with respect to any Member, the total amount of money or other Property contributed to the capital of the Company by such Member pursuant to *Article 9*.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provisions of succeeding law.

"Commitment" shall mean the obligation of a Member or Assignee to make a Capital Contribution.

"Company" shall mean **The Source Store, LLC**, an Idaho limited liability company formed under this Agreement, and any successor.

"Company Minimum Gain" shall mean the same as "partnership minimum gain" as set forth in section 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

"Company Property" shall mean any Property owned by the Company.

"Contributing Members" shall mean Members making Capital Contributions as a result of the failure of a Delinquent Member to perform a Commitment, as described in *Section 9.4*.

"Damages" shall mean any loss, damage, injury, reduced value, liability, claim, demand, settlement, judgment, award, fine, penalty, tax, fee (including any legal fees, costs and disbursements, expert fees, account fees or advisory fees), charge, cost (including any cost of investigation or enforcement costs) or expense of any nature, net of insurance recoveries.

"Default Interest Rate" shall mean the higher of the legal rate or the then-current prime rate quoted by U.S. Bank, N.A. in the jurisdiction of the Principal Office plus three percent (3%).

"Delinquent Member" shall mean a Member or Assignee who has failed to meet the Commitment

of that Member or Assignee.

"Disabling Conduct" shall mean any act or failure to act which (a) constitutes gross negligence, willful conduct or fraud, (b) is taken in bad faith, (c) involves a knowing violation of law, or (d) is done in reckless disregard of the duties involved in the conduct of one's position.

"Distribution" shall mean money or other Property, from any source, distributed to the Members and Assignees by the Company.

"Economic Rights" shall mean a Member's or Assignee's share of the Net Profits, Net Losses or any other items allocable to any period and Distributions of Company Property pursuant to the Act and this Agreement, but shall not include any Management Rights.

"Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association or any foreign trust or foreign business organization.

"Financing Event" shall mean a transaction or series of transactions whereby the Company or a successor entity to the Company undertakes or effects (i) an initial public offering of its equity securities under the Securities Act of 1933 Act, or (ii) a merger, consolidation, acquisition, sale of all or substantially all of its assets, or other similar business arrangement (including, without limitation the generality of the foregoing, any transaction in which the Members would be merged or consolidated with or into one or more other entities with the intention that such entity or entities undertake or effect an initial public offering of its or their equity securities, a subsequent merger, consolidation, acquisition, sale of all or substantially all of its or their assets, or other similar business arrangement) the principal intended and articulated purpose of which is to provide the Members and/or their respective equity owners with liquidity, whether through ownership of a publicly traded security or otherwise.

"Fiscal Year" shall mean (i) the period commencing on the date on which the Articles are filed with the Idaho Secretary of State and ending on December 31, 2003, (ii) any subsequent 12-month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clause (ii) for which the Company is required to allocate Net Profits, Net Losses or other items of Company income, gain, loss or deduction pursuant to *Article 10*.

"GAAP" shall mean U.S. generally accepted accounting principles in effect from time to time.

"Governmental Body" shall mean any (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or entity and any court or other tribunal).

"Immediate Family" shall mean a Member's spouse, children (including natural, adopted and stepchildren), and lineal ancestors or descendants.

"Initial Members" shall mean Hodge and Prehn.

"Interested Member" shall mean any Member that has more than a *de minimis* pecuniary interest in a matter submitted to the Members for a vote, other than any interest resulting from such Person's status as a Member.

"Involuntary Bankruptcy" shall mean, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or

any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person, which petition has not been dismissed within sixty (60) days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the property of such Person, which order has not been dismissed within sixty (60) days.

"Manager" means the person elected as the Manager of the Company from time to time in accordance with the provisions of *Section 6.7*. The Manager need not be a Member of the Company.

"Majority Vote of Membership Shares" shall mean Member or Members having Membership Shares in excess of one-half of the total number of issued and outstanding Membership Shares of all the Members entitled to vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority Vote of Membership Shares.

"Majority Vote of the Remaining Membership Shares" shall mean Member or Members having Membership Shares in excess of one-half of the total number of Membership Shares of all the Members entitled to vote on, consent to, or approve a particular matter, *excluding* any Interested Member(s). Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority Vote of the Remaining Membership Shares. A Member who has Transferred that Member's entire Membership Interest to an Assignee, but has not ceased to be a Member as provided herein, shall be considered a Member for the purpose of determining a Majority Vote of the Remaining Membership Shares.

"Management Right" shall mean the right to exercise management control over the Company, including the rights to information and to consent or approve actions of the Company.

"Member" shall mean an Initial Member, Substitute Member or Additional Member, including, unless the context expressly indicates to the contrary, an Assignee.

"Membership Interest" shall mean the entire ownership interest of a Member in the Company at a particular time, including a Member's Economic Rights, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to company with the terms and provisions of this Agreement.

"Membership Share" shall mean a portion of a Membership Interest in the Company held by a Member hereof, including any and all benefits to which the holder of such Membership Share may be entitled as provided in this Agreement, and all obligations of the holder of such Membership Share to comply with the terms and provisions of this Agreement.

"Net Cash from Operations" shall mean with respect to any fiscal period, all cash receipts received by the Company from operations in the ordinary course of business, including, without limitation, income from invested Reserves, but after deducting Operating Cash Expenses, debt service and any other payments made in connection with any loan to the Company or other loan secured by a lien on Company assets, capital expenditures of the Company, and amounts set aside for the creation of additional Reserves. Net Cash from Operations does not include Capital Contributions or the proceeds of any borrowings by the Company.

"Net Loss" means the net loss generated by the Company with respect to a Fiscal Year, as determined for Federal income tax purposes; *provided*, that such loss shall be decreased by the amount of all income during such period that is exempt from Federal income tax and increased by the amount of all expenditures during such period that are not deductible for Federal income tax purposes and that do not constitute capital expenditures.

"Net Profit" means the net income generated by the Company with respect to a Fiscal Year, as

determined for Federal income tax purposes; *provided*, that such income shall be increased by the amount of all income during such period that is exempt from Federal income tax and decreased by the amount of all expenditures during such period that are not deductible for Federal income tax purposes and that do not constitute capital expenditures.

"Nonrecourse Deductions" shall have the meaning set forth in section 1.704-2(b)(1) of the Regulations.

"Operating Cash Expenses" shall mean with respect to any fiscal period, the amount of cash disbursed in the ordinary course of operations of the Company during such period, including, without limitation, all cash expenses, such as insurance premiums, taxes, repair and maintenance expenses, and legal and accounting fees. Operating Cash Expenses shall not include expenditures paid out of Reserves.

"Organization Expenses" shall mean those expenses incurred in the organization of the Company including the costs of preparation of this Agreement and Articles, and as defined for purposes of section 709(a) of the Code.

"Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of each such Person where the context so permits.

"Principal Office" shall mean **1800 Broadway Avenue, Boise, Idaho 83706**, or such other principal office of the Company as determined by the Members pursuant to *Section 1.4* hereof.

"Property" shall mean any property, real or personal, tangible or intangible (including goodwill), including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Regulations" shall mean, except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the U.S. Department of the Treasury under the Code, as such regulations may be lawfully changed from time to time.

"Representatives" shall mean a Person's officers, directors, employees, managers, trustees, agents, attorneys, accountants, advisors and representatives.

"Reserves" shall mean with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which may be maintained by the Company for working capital and to pay taxes, or other costs or expenses of the Company.

"Sharing Ratio" shall mean with respect to any Member or Assignee, a fraction (expressed as a percentage), the *numerator* of which is the total of the Member's or Assignee's Membership Shares and the *denominator* is the total of all Membership Shares of all Members and Assignees as such totals exist from time to time.

"Subscription Agreement" shall mean the Agreement between an Additional Member and the Company described in *Section 13.2* of the Agreement.

"Substitute Member" shall mean an Assignee who has been admitted to all of the rights of membership pursuant to this Agreement.

"Transfer" shall mean with respect to any Membership Interest in the Company, or part thereof, as a noun, any voluntary or involuntary assignment, sale or other transfer or disposition of such Membership Interest or part thereof (which shall include, without limitation and notwithstanding any provision of the Act otherwise to the contrary, a pledge, or the granting of a security interest, lien or other encumbrance in or against, any Membership

Interest in the Company, or part thereof) and, as a verb, voluntarily or involuntarily to assign, sell or otherwise transfer or dispose of such Membership Interest or part thereof.

"Voluntary Bankruptcy" shall mean, with respect to any Person, the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property; or corporate action taken by such Person to authorize any of the foregoing.

18.2 Other Defined Terms. The following terms shall have the meanings defined for such terms in the Sections set forth below:

Term	Section
"Annual Budget"	3.4
"Claim"	15.1(c)
"Company Exercise Notice"	12.4(c)
"Company Exercise Period"	12.4(c)
"Confidential Information"	17.1
"Contributing Member"	9.4
"Covered Person"	15.1(a)
"Delinquent Member"	9.4
"Dissolution Event"	14.1
"Event of Dissociation"	13.6
"Exercise Notice"	12.4(c)
"Interest"	12.1
"Liquidator"	14.2
"Member Exercise Notice"	12.4(c)
"Member Exercise Period"	12.4(c)
"Membership Share Certificates"	5.4
"1933 Act"	5.5
"Notice"	20.8
"Pass-Thru Partner"	3.8
"Permitted Transfer"	12.2(a)
"Prime Rate"	9.5
"Proceeding"	15.1(c)
"Regulatory Allocations"	10.2(c)
"Remaining Members"	12.4(c)
"Right of First Refusal"	12.4(a)
"Secretary of State"	1.1
"Target Interest"	12.4(b)
"Tax Matters Partner"	3.8
"Term"	1.6
"Transfer Notice"	12.4(b)
"Transferor"	12.1

18.3 Construction. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter. Except as otherwise provided in this Agreement, all references to Articles and Sections refer to Articles and Sections of this Agreement, and all references to Schedules are to Schedules attached to this Agreement, each of which is incorporated in and made a part of this Agreement for all purposes.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 Scope. The procedures provided by this *Article 19* shall apply to any dispute which arises between the Members with respect to the negotiation, execution, performance, interpretation or termination of this Agreement, *provided, however*, that the terms of this Article shall not apply unless and until a Member shall have given written notice to the other invoking this *Article 19*. Such notice shall specify in reasonable detail the dispute to which it is intended to apply. Such dispute is hereinafter referred to as the "Noticed Dispute;" and the effective date of delivery of such notice is referred to as the "Notice Date."

19.2 Stay of Litigation; Tolling. Upon notice given pursuant to *Section 19.1*, the Members and the Company shall refrain from commencing litigation against the other or any of such other's Affiliates in respect of the Noticed Dispute, and each of them shall suspend prosecution or defense of any already pending litigation arising out of the Noticed Dispute. Such stay shall remain in effect until the earlier of (i) three(3) months after the Notice Date, (ii) completion of the dispute resolution process without settlement of the Noticed Dispute, or (iii) written agreement by the parties to discontinue the dispute resolution process. If any litigation is pending at the time of the Notice Date, the parties shall each take appropriate steps, including all necessary filings with the court having jurisdiction over such litigation, to suspend such litigation for the period of the stay provided for in this *Section 19.2*. Notwithstanding the foregoing, the stay of litigation provided for in this *Section 19.2* shall not apply to:

(a) Any litigation efforts pursued by either party to avoid irreparable injury arising from the Noticed Dispute and the defense thereof by the other party;

(b) Any litigation efforts made in connection with litigation which is pending on the Notice Date which are necessary to meet court-imposed schedules which the court is unwilling to stay or delay pursuant to this Section (following request therefor by the parties) pending the parties' efforts to resolve the Noticed Dispute; and

(c) Any litigation efforts that are necessary, in the opinion of counse, for either party to protect the interests in such litigation

In the event litigation is not stayed pursuant to the provisions of any of the preceding subparagraphs (a), (b) or (c), the parties shall nonetheless use the dispute resolution process provided for herein in an effort to resolve the Noticed Dispute or so much thereof as may be practical to resolve, given the claims and positions of third parties. Such action shall be taken while simultaneously continuing the litigation.

During the prendency of the stay of litigation provided for in this *Section 19.2*, all statutes of limitations which may be applicable to the Noticed Dispute shall be tolled as between or among the parties and their respective Affiliates.

19.3 Negotiation. Within ten (10) days after the Notice Date, each Member involved in the dispute shall deliver to the other Members so involved a written statement of its position with respect to the Noticed Dispute. Within fifteen (15) days after the Notice Date, all Members involved in the dispute and the Manager shall meet and conduct good faith discussions and negotiations in an attempt to resolve the Noticed Dispute in an amicable and cooperative manner. If the parties are unable to settle the Noticed Dispute by the 30th day following the Notice Date, they shall mutually appoint a neutral third-party mediator. If the parties are unable to agree upon the neutral third-

party mediator by the 30th day following the Notice Date, each Member involved in the dispute shall appoint one neutral mediator, and the appointed mediators shall then appoint a third neutral mediator who shall attempt to mediate the dispute in accordance with *Section 19.4* below.

19.4 Mediation. Within fifteen (15) days after appointment of the mediator, each party shall submit a written statement to the mediator and to the other Member(s) involved in the dispute, and each party may, within ten (10) days after receipt of the other party's statement, submit to the mediator and the opposing party or parties, one rebuttal statement. Within twenty (20) days after submission of the rebuttal statements, on a date and at a place in Boise, Idaho set by the mediator, the parties in dispute shall meet with the mediator to negotiate and resolve the Noticed Dispute. If the parties are unable to reach a settlement of the Noticed Dispute, the mediator shall, within fifteen (15) days thereafter, deliver in writing to each party a recommended settlement of the Noticed Dispute. Within five (5) days after receipt of the mediator's recommendation, the parties shall meet at a time and place in Boise, Idaho set by the mediator and make a final attempt to resolve the Noticed Dispute. If they are unable to do so, the dispute resolution process shall be deemed terminated, and any stay of litigation shall also terminate.

19.5 Fees and Expenses. The parties shall each cover their own costs and fees associated with the dispute resolution process provided for in this Agreement. The fees and expenses of the neutral mediator(s) shall be divided equally by the parties.

19.6 Scope of Obligation; Specific Performance. The parties agree to use the settlement procedures outlined above in a good faith effort to provide for a speedy and economical means of resolving disputes. However, the parties agree that no party shall be in default or in breach hereof for failure to adhere to any of the procedures outlined above, *except that*: (i) compliance with the procedures hereof shall be a condition precedent to any party exercising its rights under *Section 19.7* below, and (ii) any party may obtain an order of specific performance in respect of the other part(ies)' obligation under *Section 19.2*. In addition, nothing herein shall be construed to require any party to agree to any particular settlement of a dispute. It is the intention of the parties that this Agreement be purely procedural in nature. Its purpose is to ensure that the possibilities of settlement are fully explored by the parties with the aid of a neutral mediator before either party resorts to or continues the prosecution of litigation.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

20.1 Entire Agreement. This Agreement, together with all schedules attached hereto from time to time, represents the entire agreement among all the Members and between the Members and the Company relating to the subject matter hereof, and supersedes all prior contracts, agreements and understandings among them. No course of prior dealings among the Members shall be relevant to supplement or explain any term used in this Agreement.

20.2 Rights of Creditors and Third Parties. This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their successors and permitted assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement, any Subscription Agreement, or any other agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

20.3 Headings. The boldface headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

20.4 Additional Documents. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions or intentions of this Agreement.

20.5 Successors; Counterparts. Subject to *Articles 12* and *13*, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors and permitted assigns, or nominees or representatives, of the Members and (b) may be executed in several counterparts, with the same effect as if the parties executing the several counterparts had all executed one and the same agreement.

20.6 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Idaho (without giving effect to conflicts of laws principles).

20.7 Waiver.

(a) No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

20.8 Notices. Except as otherwise provided in this Agreement, all notices, requests and other communications to any Member or Assignee (each, a "Notice") shall be in writing (including telecopier or similar writing) and shall be given to such Member (and any other Person designated by such Member) at its address or telecopier number set forth in the Membership Registry of the Company or such other address or telecopier number as such Member may hereafter specify for the purpose of notice. Each such Notice shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this *Section 20.8* and the appropriate confirmation is received, (b) if given by mail, when deposited in the United States mail, addressed to the Member, with postage prepaid, or (c) if given by any other means, when delivered at the address specified pursuant to this *Section 20.8*.

20.9 Waiver of Partition. Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain an action for partition of the Company's Property.

20.10 Survival. All indemnities and reimbursement obligations made pursuant to this Agreement shall survive dissolution and liquidation of the Company until the expiration of the longest applicable statute of limitations (including extensions and waivers) with respect to the matter for which a party would be entitled to be indemnified or reimbursed, as the case may be.

20.11 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected, and shall continue to be valid and enforceable to the fullest extent permitted by law.

20.12 Counsel. The Members ratify the Company's retention of Hoagland, Dominick & Hicks, Attorneys At Law, PLLC (which is representing the Company, and not any Member) in connection with the formation and organization of the Company. The Members have been given the opportunity to retain other counsel to represent their separate individual interests in connection with such matter.

IN WITNESS WHEREOF, the Members have signed this Operating Agreement of **The Source Store, LLC**, effective as of the date first set forth above.

INITIAL MEMBERS:

Michael L. Hodge II	Donnelly Prehn

Schedule 1

THE SOURCE STORE, LLC

MEMBER REGISTRY

Name of Member	Capital Contribution	Membership Shares	Sharing Ratio
Michael L. Hodge II	$33,000 (1)	85,000 (2)	85.0%
Donnelly Prehn	$10,000 (1)	15,000 (2)	15.0%

(1) The initial Capital Contribution of Mr. Hodge was in the form of a contribution of the assets of "The Source," a sole proprietorship of which Mr. Hodges was the owner; the Members agree that Mr. Hodge's Capital Account will be credited with the fair value of such assets, as set forth above. Mr. Prehn's initial Capital Contribution was in the form of partial conversion of a note with the Company.

Schedule 2

THE SOURCE STORE, LLC

OFFICERS

Name	Office
Michael L. Hodge II	President and Chief Executive Officer
Michael L. Hodge II	Secretary

EXHIBIT B

THE SOURCE STORE, LLC
NON-COMPETE AGREEMENT

This Non-Compete Agreement (this "*Agreement*") is made and entered into as of the 12TH day of May, 2003, by and between Michael L. Hodge II ("*Hodge*") and The Source Store, LLC, an Idaho limited liability company (the "*Company*").

Hodge is a founder of the Company, and currently serves as its Managing Member. In consideration of Hodge's continued relationship with the Company, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Customer Non-Solicitation and Non-Competition. Hodge shall not, during the term of his employment with and/or ownership of, the Company and for two (2) years following the voluntary or involuntary termination of such employment and/or ownership for any reason directly or indirectly solicit, divert, take away, or attempt to solicit, divert or take away, any of the Company's customers or the business or patronage of any such customers (either on Hodge's own behalf or on behalf of any other person, partnership, corporation or other entity).

2. Employee Non-Solicitation. Hodge shall not, during the term of employment with and/or ownership of the Company and for two (2) years following termination of such employment and/or ownership for any reason, directly or indirectly solicit, recruit or hire any other employee of the Company (either on Hodge's own behalf or on behalf of any other person, partnership, corporation or other entity).

3. Enforcement.

A. Reasonableness of Restrictions. Hodge acknowledges that compliance with this Agreement is reasonable and necessary to protect the Company's legitimate business interests, including but not limited to the Company's goodwill.

B. Irreparable Harm. Hodge acknowledges that a breach of any of Hodge's obligations under this Agreement will result in great, irreparable and continuing harm and damage to the Company for which there is no adequate remedy at law.

C. Injunctive Relief. Hodge agrees that in the event Hodge breaches this Agreement, the Company shall be entitled to seek, from any court of competent jurisdiction, preliminary and permanent injunctive relief to enforce the terms of this Agreement, in addition to any and all monetary damages allowed by law, against Hodge.

D. Extension of Covenants. In the event Hodge violates any one or more of the covenants contained in *Sections 2* or *3* of this Agreement, Hodge agrees that the running of the term of each covenant so violated shall be tolled during the period(s) of any such violation and the pendency of any litigation arising out of any such violation.

E. Judicial Modification. The parties have attempted to limit Hodge's ability to compete only to the extent necessary to protect Company from unfair business practices and/or unfair competition, including without limitation, loss of customers or good will, and

raiding or loss of employees. The parties recognize, however, that reasonable people may differ in making such a determination. Consequently, the parties hereby agree that, if the scope or enforceability of any restrictive covenant is in any way disputed at any time, a court or other trier of fact may modify and enforce the covenant to the extent that it believes to be reasonable under the circumstances existing at that time. The parties intend that each of the covenants be deemed to be a series of separate covenants, one for each and every county of each and every state of the United States, and one for each and every political subdivision of each and every other country where the covenants shall be effective.

F. Attorneys' Fees. In any suit or action arising out of or relating to this Agreement, whether sounding in contract, tort or otherwise, the prevailing party shall be entitled to recover said party's expenses (including, without limitation, reasonable attorneys' fees, litigation costs, court costs and amounts paid in investigation, defense or settlement of any claims, and whether or not incurred at the trial, appellate or administrative levels) from the nonprevailing party.

4. Not a Contract for Employment. Hodge acknowledges and understands that this Agreement is not a contract of employment, and nothing herein shall guaranty Hodge's continued employment with, service to or ownership of, the Company.

5. Miscellaneous.

A. Survival. Hodge understands that this Agreement shall be effective as of the date first written above and that the terms of this Agreement shall remain in full force and effect not only during the continuation of Hodge's employment with and/or ownership of the Company, but also after the termination of employment or ownership for any reason by the Company or Hodge.

B. Waiver. Failure of the Company to exercise or otherwise act with respect to any of its rights under this Agreement shall not be construed as a waiver of any breach, nor prevent the Company from thereafter enforcing strict compliance with any and all terms of this Agreement.

C. Severability. If any part of this Agreement shall be adjudicated to be invalid or unenforceable, as to duration, territory or otherwise, then such part shall be deemed deleted from this Agreement or amended, as the case may be, in order to render the remainder of this Agreement valid and enforceable.

D. Agreement Binding. This Agreement shall be binding upon and inure to the benefit of the Company, the Company's successors and assigns, Hodge and Hodge's heirs, executors, administrators and legal representatives.

E. Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of Idaho, without regard to its conflict of laws rules. Hodge hereby consents and submits to the exclusive jurisdiction of the courts of the State of Idaho and the U.S. District Court for the District of Idaho with respect to any actions or causes of action arising hereunder and agrees that Boise, Idaho shall be the

exclusive venue of any actions or causes of action arising hereunder (unless injunctive relief is sought and, in Company's judgment, may not be effective unless obtained in some other venue).

F. Titles and Captions. All section and paragraph titles and captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the construction or interpretation of this Agreement.

G. Entire Agreement. This Agreement contains all of the understandings and agreements between the parties concerning matters set forth in this Agreement. The terms of this Agreement supersede any and all prior statements, representations and agreements by or between the Company and Hodge, or either of them, concerning the matters set forth in this Agreement. Hodge acknowledges that no person who is an agent or employee of the Company may orally or by conduct modify, delete, vary, or contradict the terms or conditions of this Agreement or this paragraph. This Agreement may be modified only by a written agreement signed by both parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have signed this Non-Compete Agreement as of the day and year first set forth above.

The Source Store, LLC

By: M. Hodge II
Name: Michael L. Hodge
Title: MANAGER

M. Hodge II
Michael L. Hodge II

EXHIBIT C

251

CERTIFICATE OF ORGANIZATION
LIMITED LIABILITY COMPANY

(Instructions on back of application)

FILED EFFECTIVE
2012 APR 16 AM 5:05
SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited liability company is:

THE SOURCE LLC

2. The complete street and mailing addresses of the initial designated office:

3637 N. LAKE HARBOR LANE BOISE ID 83703
(Street Address)

(Mailing Address, if different than street address)

3. The name and complete street address of the registered agent:

MICHAEL L HODGE
(Name)

(Street Address)
3429 N CLOVERDALE RD BOISE ID 83713

4. The name and address of at least one member or manager of the limited liability company:

Name	Address
MICHAEL L. HODGE	3429 N. CLOVERDALE RD BOISE ID 83713
GEORGE M. BROWN	11974 JODY DR BOISE ID 83713
Desiree CLAIBORNE	5304 N 43RD DR GLENDALE AZ 85301

5. Mailing address for future correspondence (annual report notices):

3637 N. LAKE HARBOR LANE BOISE ID 83703

6. Future effective date of filing (optional): _____

Signature of a manager, member or authorized person.

Signature _____
Typed Name: GEORGE BROWN

Signature _____
Typed Name: _____

Secretary of State use only

IDAHO SECRETARY OF STATE
04/17/2012 05:00
CK: 965267 CT: 172099 BH: 1320055
1 @ 100.00 = 100.00 ORGAN LLC # 2
1 @ 20.00 = 20.00 EXPEDITE C # 3

W113013

cert_org_llc Rev. 07/2010

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ED GUERRICABEITIA
DAVISON, COPPLE, COPPLE & COPPLE, LLP
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Attorneys for Defendants
Michael L. Hodge II and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS', MICHAEL L. HODGE II AND THE SOURCE, LLC, ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge") and The Source, LLC (hereinafter "Source 2"), and hereby submit their answer to Plaintiffs' Second Amended Complaint as follows:

1. Hodge and Source 2 deny each and every allegation of Plaintiffs' Second Amended Complaint not specifically admitted to herein.

ORIGINAL

KS

PARTIES

2. Hodge and Source 2 are without sufficient information to admit or deny the allegations set forth in paragraphs 1 and 2 of Plaintiffs' Second Amended Complaint and therefore deny the same.

3. Hodge and Source 2 admit the allegations set forth in paragraphs 3, 4, 5, 6, 7, 8 and 9 of Plaintiffs' Second Amended Complaint.

JURISDICTION

4. Hodge and Source 2 admit the allegations set forth in paragraphs 10 and 11 of Plaintiffs' Second Amended Complaint.

5. Hodge and Source 2 are without sufficient information to admit or deny the allegations set forth in paragraphs 12 and 13 of Plaintiffs' Second Amended Complaint and therefore deny the same.

GENERAL ALLEGATIONS

Formation, Membership and Governing Agreements

6. In answering paragraph 14, Hodge and Source 2 reallege paragraphs 1 through 5 above as though set forth in full herein.

7. Hodge and Source 2 admit the allegations set forth in paragraph 15 of Plaintiffs' Second Amended Complaint.

8. Hodge and Source 2 admit only that Prehn and Hodge were initial members of The Source Store, LLC and an Operating Agreement of The Source Store LLC was executed, but deny any and all remaining allegations set forth in paragraph 16 of Plaintiffs' Second Amended Complaint.

9. Hodge and Source 2 admit only that Claiborne and Bandak acquired membership shares and are members of The Source Store LLC, but lack sufficient information to admit or deny the remainder of the allegations set forth in paragraph 17 and therefore deny the same.

10. Hodge and Source 2 admit only that Brown acquired membership shares and is a member of The Source Store LLC, but lack sufficient information to admit or deny the remainder of the allegations set forth in paragraph 18 and therefore deny the same.

11. Hodge and Source 2 are without sufficient information to admit or deny the allegations set forth in paragraph 19 of Plaintiffs' Second Amended Complaint and therefore deny the same.

12. Hodge and Source 2 admit only that the provisions of the fully executed Operating Agreement speak for themselves, but lack sufficient information to admit or deny the remainder of the allegations set forth in paragraphs 20 and 21 of Plaintiffs' Second Amended Complaint and therefore deny the same.

13. Hodge and Source 2 admit only that the Exhibit B attached to Plaintiffs' Second Amended Complaint purports to be a non-compete agreement executed by Hodge and that the provisions contained therein speak for themselves and that Prehn also executed a similar agreement, but lack sufficient information to admit or deny the remainder of the allegations set forth in paragraph 22 of Plaintiffs' Second Amended Complaint and therefore deny the same.

14. Hodge and Source 2 admit only that the provisions of the fully executed Operating Agreement speak for themselves, but lack sufficient information to admit or deny the remainder of the allegations set forth in paragraphs 23, 24 and 25 of Plaintiffs' Second Amended Complaint and therefore deny the same.

Development of The Source as a Viable Business

15. Hodge and Source 2 deny the allegations set forth in paragraphs 26, 27, 28 and 29 of Plaintiffs' Second Amended Complaint.

16. Hodge and Source 2 are without sufficient information to admit or deny the allegations set forth in paragraph 30 of Plaintiffs' Second Amended Complaint and therefore deny the same.

17. Hodge and Source 2 deny the allegations set forth in paragraphs 31 and 32 of Plaintiffs' Second Amended Complaint.

18. Hodge and Source 2 only admit that the Source Store, LLC has developed an excellent reputation in the promotional product, tradeshow, and marketing industries; that The Source Store, LLC is associated with quality service and excellent promotional and marketing products on a local, regional and national scale; and that The Source Store, LLC name is well-recognized in the promotional products and apparel industry, but deny the remaining allegations set forth in paragraph 33 of Plaintiffs' Second Amended Complaint.

19. Hodge and Source 2 admit the allegations set forth in paragraph 34 of Plaintiffs' Second Amended Complaint.

Dissolution of The Source

20. Hodge and Source 2 only admit that disputes arose between the members of The Source Store, LLC, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 35 of Plaintiffs' Second Amended Complaint and therefore deny the same.

21. Hodge and Source 2 only admit that the members voted to dissolve The Source Store, LLC which is still ongoing and that customer orders opened prior to the members voting to dissolve the company (the "Existing Purchase Orders") are currently being processed, filled

and billed, but lack sufficient information to admit or deny the remaining allegations set forth in paragraphs 36 and 37 of Plaintiffs' Second Amended Complaint and therefore deny the same.

22. Hodge and Source 2 deny the allegations set forth in paragraph 38 of Plaintiffs' Second Amended Complaint.

23. Hodge and Source 2 admit only that the Existing Purchase Orders are assets of The Source Store, LLC, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 39 of Plaintiffs' Second Amended Complaint and therefore deny the same.

24. Hodge and Source 2 deny the allegations set forth in paragraphs 40, 41 and 42 of Plaintiffs' Second Amended Complaint.

25. Hodge and Source 2 are without sufficient information to admit or deny the allegations set forth in paragraphs 43 and 44 of Plaintiffs' Second Amended Complaint and therefore deny the same.

26. Hodge and Source 2 admit only that there was communication among the members concerning Hodge's role and effect of the non-compete agreement after members voted to dissolve The Source Store, LLC, but denies any remaining allegations and inferences set forth in paragraph 45 of Plaintiffs' Second Amended Complaint.

27. Hodge and Source 2 admit only that the majority of members voted to appoint Hodge as the company's liquidator, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 46 of Plaintiffs' Second Amended Complaint and therefore deny the same.

28. Hodge and Source 2 deny the allegations set forth in paragraphs 47 and 48 of Plaintiffs' Second Amended Complaint.

29. Hodge and Source 2 admit that Hodge and Prehn both expressed their intentions to compete in the promotional products industry and that the Plaintiffs accurately identify "valuable trade secrets and intellectual property" as assets of The Source Store, LLC which were subject to an auction in accordance with the Court's Order, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 49 of Plaintiffs' Second Amended Complaint.

Self-Dealing and Misappropriation of The Source Assets

30. Hodge and Source 2 admit only that Exhibit C attached to Plaintiffs' Second Amended Complaint purports to be a filing of a Certificate of Organization of an entity named The Source, LLC with the Idaho Secretary of State which list Hodge, George Brown and Desiree Claiborne as members, but lacks sufficient information to admit or deny the remaining allegations set forth in paragraph 50 of Plaintiffs' Second Amended Complaint and therefore deny the same.

31. Hodge and Source 2 deny the allegations set forth in paragraphs 51, 52, 53 and 54 of Plaintiffs' Second Amended Complaint.

32. Hodge and Source 2 admit only that in accordance with and pursuant to the Court's Order RE: Dissolution of The Source Store, LLC and Related Matters entered on May 17, 2012, that Hodge holds the capacity of liquidator, manager of The Source Store, LLC and is a member of Source 2, but denies any remaining allegations and inferences set forth in paragraph 55 of Plaintiffs' Second Amended Complaint.

The Auction of The Source Assets

33. Hodge and Source 2 admit that the skaker cups are one of The Source Store, LLC's product, but deny it is the "most important product in the Source 1 product line." Hodge

forwarded an e-mail from Tony Fernandez at Technology Plastics, LLC to all members of The Source Store, LLC who valued the molds for the "Patriot Shaker Cup" to be within the range of $40,000 to $50,000 assuming there are sufficient customer orders and that the value of the molds without customer orders for shaker cups was approximately $1,900. Technology Plastics operates, maintains and currently has possession of the foregoing molds, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 56 of Plaintiffs' Second Amended Complaint and therefore deny the same.

34. Hodge and Source 2 admit that numerous emails to all members of The Source Store, LLC were exchanged in preparation of the auction of the company's assets which the content of the emails speak for themselves, but lack sufficient information to admit or deny the remaining allegations set forth in paragraphs 57, 58, 60 and 61 of Plaintiffs' Second Amended Complaint and therefore deny the same.

35. Hodge and Source 2 admit the allegations set forth in paragraph 59 of Plaintiffs' Second Amended Complaint.

36. Hodge and Source 2 admit that the auction proceeded on Friday, May 18, 2012 and that after numerous negotiations, discussions, revisions and due diligence between and by the parties' respective counsel regarding the auction terms, bidding process, description of the company assets and proposed instructions, an e-mail was sent on May 17, 2012 at or around 6:12 p.m. by Plaintiffs' counsel disagreeing with the auction process after Plaintiffs had previously participated in negotiating, but deny any remaining allegations set forth in paragraph 62 in Plaintiffs' Second Amended Complaint.

37. Hodge and Source 2 admit only that at the close of the auction in accordance with the bidding instructions, the highest bidders were to tender payment of their bids to Hodge by

Tuesday, May 22, 2012 at 5 p.m. Pursuant to the instructions previously forwarded to all members and other participants at the auction, the assets awarded would not be released to the highest bidder until payment was submitted and received by Hodge by 5:00 p.m. on Tuesday, May 22, 2012. Failure to submit payment to Hodge by said date and time resulted in the highest bidder relinquishing his award and the asset being awarded to the next highest bidder. Hodge received the tender for the embroidery machine and intellectual property lots by May 22, 2012. Any remaining allegations set forth in paragraph 63 of Plaintiffs' Second Amended Complaint are denied.

38. Hodge and Source 2 admit only that a letter was sent expressing the logo, name and "design" of the shaker cup was the intellectual property of The Source Store, LLC in which Hodge, as well as, all the other members of The Source Store, LLC had an equal right and opportunity to acquire at the auction. Hodge and Source 2 further admit that Prehn, as one of The Source Store, LLC's initial members, was directly involved during the development of the shaker molds and the intellectual property that supports the shaker molds and was a sophisticated auction participant with superior knowledge of the assets being liquidated. Hodge and Source 2 lack sufficient information to admit or deny the remaining allegations set forth in paragraph 64 of Plaintiffs' Second Amended Complaint.

39. Hodge and Source 2 admit only that a letter was sent to Technology Plastics, LLC which letter speaks for itself, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 65 of Plaintiffs' second Amended Complaint.

40. Hodge and Source 2 admit that Hodge was notified that Prehn had tendered his bid amount to his counsel, but lack sufficient information to admit or deny the remaining

allegations set forth in paragraph 66 of Plaintiffs' Second Amended Complaint and therefore deny the same.

41. Hodge and Source 2 admit the allegations set forth in paragraph 67 of Plaintiffs' Second Amended Complaint.

FIRST CLAIM FOR RELIEF
Breach of Agreements for Prehn Loan, Back Salary and Prehn Bonus

42. In answering paragraph 68, Hodge and Source 2 reallege paragraphs 1 through 41 above as though set forth in full herein.

43. Hodge and Source 2 deny the allegations set forth in paragraph 69 of Plaintiffs' Second Amended Complaint.

44. Hodge and Source 2 lack sufficient information to admit or deny the allegations set forth in paragraphs 70, 71 and 72 of Plaintiffs' Second Amended Complaint and therefore deny the same.

SECOND CLAIM FOR RELIEF
Breach of Operating Agreement

45. In answering paragraph 73, Hodge and Source 2 reallege paragraphs 1 through 44 above as though set forth in full herein.

46. Hodge and Source 2 deny the allegations set forth in paragraphs 74, 75, 76 and 77 of Plaintiffs' Second Amended Complaint.

THIRD CLAIM FOR RELIEF
Breach of Non-Compete Agreement

47. In answering paragraph 78, Hodge and Source 2 reallege paragraphs 1 through 46 above as though set forth in full herein.

48. Hodge and Source 2 deny the allegations set forth in paragraphs 79, 80, 81, 82, 83, 84 and 85 of Plaintiffs' Second Amended Complaint.

FOURTH CLAIM FOR RELIEF
Breach of Fiduciary Duty

49. In answering paragraph 86, Hodge and Source 2 reallege paragraphs 1 through 48 above as though set forth in full herein.

50. Hodge and Source 2 admit only that Hodge has certain fiduciary duties to The Source Store, LLC for which Idaho law speaks for itself, but lack sufficient information to admit or deny the allegations set forth in paragraphs 87, 88, 89 and 90 of Plaintiffs' Second Amended Complaint and therefore deny the same.

51. Hodge and Source 2 deny the allegations set forth in paragraphs 91, 92, 93 and 94 of Plaintiffs' Second Amended Complaint.

FIFTH CLAIM FOR RELIEF
Breach of Covenant of Good Faith and Fair Dealing

52. In answering paragraph 95, Hodge and Source 2 reallege paragraphs 1 through 51 above as though set forth in full herein.

53. Paragraphs 96, 97 and 98 state legal conclusions to which no response is required.

54. Hodge and Source 2 deny the allegations set forth in paragraphs 99, 100 and 101 of Plaintiffs' Second Amended Complaint.

SIXTH CLAIM FOR RELIEF
Breach of Loan Agreement between Source 1 and Hodge

55. In answering paragraph 102, Hodge and Source 2 reallege paragraphs 1 through 54 above as though set forth in full herein.

56. Hodge and Source 2 lack sufficient knowledge to admit or deny the allegations set forth in paragraphs 103, 104, 105, 106 and 107 of Plaintiffs' Second Amended Complaint and therefore deny the same.

SEVENTH CLAIM FOR RELIEF
Violation of Idaho Trade Secrets Act

57. In answering paragraph 108, Hodge and Source 2 reallege paragraphs 1 through 56 above as though set forth in full herein.

58. Hodge and Source 2 admit only that trade secrets and intellectual property belonging to The Source Store, LLC includes but is not limited to ideas, business plans, opportunities, designs, purchasing practices and customer lists which Hodge acquired from the auction held on May 18, 2012 and submitted payment to the company in accordance with the auction instructions, but lack sufficient information to admit or deny the remaining allegations set forth in paragraph 109 of Plaintiffs' Second Amended Complaint and therefore deny the same.

59. Paragraph 110 states a legal conclusion to which no response is required.

60. Hodge and Source 2 deny the allegations set forth in paragraphs 111, 112, 113, 114 and 115 of Plaintiffs' Second Amended Complaint.

EIGHTH CLAIM FOR RELIEF
Violation of the Lanham Act

61. In answering paragraph 116, Hodge and Source 2 reallege paragraphs 1 through 60 above as though set forth in full herein.

62. Hodge and Source 2 deny the allegations set forth in paragraphs 117, 118, 119, 120, 121 and 122 of Plaintiffs' Second Amended Complaint.

NINTH CLAIM FOR RELIEF
Common Law Trade Name and Trademark Infringement

63. In answering paragraph 123, Hodge and Source 2 reallege paragraphs 1 through 62 above as though set forth in full herein.

64. Hodge and Source 2 deny the allegations set forth in paragraphs 124, 125, 126 and 127 of Plaintiffs' Second Amended Complaint.

TENTH CLAIM FOR RELIEF
Unjust Enrichment

65. In answering paragraph 128, Hodge and Source 2 reallege paragraphs 1 through 64 above as though set forth in full herein.

66. Hodge and Source 2 deny the allegations set forth in paragraphs 129, 130, 131 and 132 of Plaintiffs' Second Amended Complaint.

ELEVENTH CLAIM OF RELIEF
Tortious Interference with Contract

67. In answering paragraph 133, Hodge and Source 2 reallege paragraphs 1 through 66 above as though set forth in full herein.

68. Hodge and Source 2 deny the allegations set forth in paragraphs 134, 135, 136, 137, 138 and 139 of Plaintiffs' Second Amended Complaint.

TWELFTH CLAIM FOR RELIEF
Constructive Trust

69. In answering paragraph 140, Hodge and Source 2 reallege paragraphs 1 through 68 above as though set forth in full herein.

70. Hodge and Source 2 deny the allegations set forth in paragraphs 141 and 142 of Plaintiffs' Second Amended Complaint.

THIRTEENTH CLAIM FOR RELIEF
Injunctive Relief

71. In answering paragraph 143, Hodge and Source 2 reallege paragraphs 1 through 70 above as though set forth in full herein.

72. Paragraphs 144, 145 and 149 state legal conclusions to which no response is required.

73. Hodge and Source 2 deny the allegations set forth in paragraphs 146, 147, 148, 150, 151 and 152 of Plaintiffs' Second Amended Complaint.

FOURTEENTH CLAIM FOR RELIEF
Breach of Warranties

74. In answering paragraph 153, Hodge and Source 2 reallege paragraphs 1 through 73 above as though set forth in full herein.

75. Hodge and Source 2 deny the allegations set forth in paragraphs 154, 155 and 156 of Plaintiffs' Second Amended Complaint.

FIFTEENTH CLAIM FOR RELIEF
Unconscionable Auction Contract

76. In answering paragraph 157, Hodge and Source 2 reallege paragraphs 1 through 75 above as though set forth in full herein.

77. Hodge and Source 2 deny the allegations set forth in paragraphs 158, 159 and 160 of Plaintiffs' Second Amended Complaint.

SIXTEENTH CLAIM FOR RELIEF
Fraud

78. In answering paragraph 161, Hodge and Source 2 reallege paragraphs 1 through 77 above as though set forth in full herein.

79. Hodge and Source 2 deny the allegations set forth in paragraphs 162, 163, 164, 165, 166, 167, 168, 169, 170 and 171 of Plaintiffs' Second Amended Complaint.

SEVENTEENTH CLAIM FOR RELIEF
Promissory Estoppel

80. In answering paragraph 172, Hodge and Source 2 reallege paragraphs 1 through 79 above as though set forth in full herein.

81. Hodge and Source 2 deny the allegations set forth in paragraphs 173, 174, 175 and 176 of Plaintiffs' Second Amended Complaint.

EIGHTEENTH CLAIM FOR RELIEF
Equitable Estoppel

82. In answering paragraph 177, Hodge and Source 2 reallege paragraphs 1 through 81 above as though set forth in full herein.

83. Hodge and Source 2 deny the allegations set forth in paragraphs 178, 179, 180, 181, 182, 183 and 184 of Plaintiffs' Second Amended Complaint.

NINETEENTH CLAIM FOR RELIEF
Declaratory Relief

84. In answering paragraph 185, Hodge and Source 2 reallege paragraphs 1 through 83 above as though set forth in full herein.

85. Hodge and Source 2 deny the allegations set forth in paragraph 186 of Plaintiffs' Second Amended Complaint.

ATTORNEY FEES

86. Hodge and Source 2 deny the allegations set forth in paragraph 187 of Plaintiffs' Second Amended Complaint.

PUNITIVE DAMAGES

87. Hodge and Source 2 deny the allegations set forth in paragraph 188 of Plaintiffs' Second Amended Complaint.

AFFIRMATIVE DEFENSES

88. Plaintiffs' Second Amended Complaint fails to state a cause of action against Hodge and Source 2 upon which relief can be granted.

89. Plaintiffs, one or both of them, materially breached the Operating Agreement which breach bars Plaintiffs' claims and/or damages, if any.

90. Plaintiffs stipulated and agreed, which stipulation was memorialized by the Court's Order RE: Dissolution of The Source Store, LLC and Related Matters entered on May 17, 2012, to release Hodge from all terms and obligations imposed by the non-compete agreement as of May 18, 2012.

91. No valid or enforceable agreement existed between Hodge and one or both of the Plaintiffs regarding the purported Prehn loans, back salary and/or bonus.

92. Plaintiffs' claims and/or damages, in whole or in part, are barred by the statute of frauds.

93. Plaintiffs' claims and/or damages, in whole or in part, are barred by the doctrines of waiver, unclean hands and/or laches.

94. Plaintiffs' claims and/or damages, in whole or in part, are barred by the doctrine of accord and satisfaction.

95. Plaintiffs' claims and/or damages, in whole or in part, are barred for lack of consideration.

96. To the extent that Plaintiffs contributed any financial support to The Source Store, LLC, such contributions constitute capital contributions under the Operating Agreement.

97. Plaintiffs' damages, if any, as participants in the auction of The Source Store's assets are the result of their own self-dealing and negligence.

98. The Source Store's assets sold at the auction held on May 18, 2012 were sold "as-is" without any express or implied warranties of merchantability or fitness and without warranties of any kind.

99. Plaintiffs' claims and/or damages, in whole or in part, are barred by their own self-dealings and breaches of their duties of loyalty and care to all members of The Source Store, LLC.

100. Plaintiffs' claims and/or damages, in whole or in part, are barred by the assumption of risk doctrine in participating in the auction.

101. Plaintiffs' reliance on statements made, if any, was not reasonable or justified.

102. Plaintiffs participated, negotiated and accepted the auction terms and bidding procedures.

103. Plaintiffs' reliance on the auction terms and bidding procedures, if any, arose from representations and advice of an independent third party.

104. Plaintiffs' claims and/or damages, in whole or in part, are barred by the parole evidence rule.

105. Plaintiffs' damages, if any, should be reduced by offset.

106. Plaintiffs' claims and/or damages, in whole or in part, are barred for failure to mitigate their damages.

107. Plaintiffs' claims and/or damages, in whole or in part, are barred by the doctrines of promissory, equitable and/or quasi estoppel.

108. The discovery process may reveal other affirmative defenses for which Hodge and Source 2 reserve the right to amend this Answer and pursue said affirmative defenses.

ATTORNEY'S FEES AND COSTS

109. Hodge and Source 2 hereby incorporate by reference paragraphs 1 through 108 above, as though fully set forth herein.

46. Pursuant to Idaho Code §§ 12-120(3), 12-121, Rule 54 of the Idaho Rules of Civil Procedure and/or the Operating Agreement, Hodge and Source 2 are entitled to recover reasonable attorney's fees and costs for the preparation and defense of this action. Hodge and Source 2 have retained the firm Davison, Copple, Copple & Copple to prosecute this action.

WHEREFORE, the Defendants, Hodge and Source 2, pray for relief as follows:

1. That Plaintiffs' Second Amended Complaint be dismissed with prejudice;

2. That Defendants, Hodge and Source 2 be awarded reasonable attorney fees and costs; and

3. For such other and further relief as the Court may deem just and proper.

DATED this 18 day of July, 2012.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for Michael L. Hodge II and The Source, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of July, 2012, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701 *Attorneys for Plaintiffs*	_____ by U.S. Mail __✓__ by Hand Delivery _____ by Facsimile _____ by Electronic Mail
Charles C. Crafts Crafts Law Inc. 7363 Barrister Boise, Idaho 83704 *Attorney for Defendant George M. Brown*	__✓__ by U.S. Mail _____ by Hand Delivery _____ by Facsimile _____ by Electronic Mail
Judy L. Geier Evans Keane, LLP 1405 W. Main St. P.O. Box 959 Boise, Idaho 83701-0959 *Attorneys for Defendant The Source Store, LLC*	__✓__ by U.S. Mail _____ by Hand Delivery _____ by Facsimile _____ by Electronic Mail
Brian L. Boyle Attorney at Law 903 E. Winding Creek Dr., Ste. 150 Eagle, Idaho 83616 *Attorney for Defendant Christopher Claiborne*	__✓__ by U.S. Mail _____ by Hand Delivery _____ by Facsimile _____ by Electronic Mail

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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **THE SOURCE STORE, LLC'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

The Defendant The Source Store, LLC, (hereinafter the "Source 1"), by and through its counsel of record, Judy L. Geier, of the firm Evans Keane, LLP, submits The Source Store, LLC's Answer to Plaintiffs' Second Amended Complaint and admits, denies and alleges as follows:

1. Source 1 denies each and every allegation of Plaintiffs' Second Amended Complaint (hereinafter the "Complaint") not expressly and specifically admitted.

PARTIES

2. In answering Paragraphs 1 and 2, Source 1 lacks knowledge sufficient to admit or deny and therefore denies the same.

3. In answering Paragraphs 3 through 9, Source 1 admits the same.

JURISDICTION AND VENUE

4. In answering Paragraphs 10 and 11, Source 1 admits the same.

5. In answering Paragraphs 12 and 13, Source 1 lacks knowledge sufficient to admit or deny and therefore denies the same.

GENERAL ALLEGATIONS

6. In answering Paragraph 14, Source 1 realleges Paragraphs 1 through 5 above as though set forth in full herein.

7. In answering Paragraph 15, Source 1 admits the same.

8. In answering Paragraph 16, Source 1 admits that Prehn and Hodge were its initial members. As to the remainder of the allegations and all inferences contained in the Paragraph, Source 1 lacks sufficient information to admit or deny and therefore denies the same.

9. In answering Paragraphs 17 and 18, Source 1 admits that Claiborne, Bandak, and Brown acquired membership shares in Source 1. As to the remainder of the allegations and inferences contained in the Paragraphs, Source 1 is without sufficient information to admit or deny and therefore denies the same.

10. In answering Paragraph 19, Source 1 is without sufficient information to admit or deny and therefore denies the same.

11. In answering Paragraphs 20 and 21, Source 1 admits that the provisions of the fully executed Operating Agreement speak for themselves. As to the remainder of the allegations contained in the Paragraphs, Source 1 lacks sufficient information to admit or deny and therefore denies the same.

12. In answering Paragraph 22, Source 1 admits that the Exhibit B purports to be a non-compete agreement executed by the Defendant Michael L. Hodge II and that the provisions contained therein speak for themselves. Source 1 further admits that Prehn also executed a non-compete

agreement. As to the remainder of the allegations and inferences contained in Paragraph 22, Source 1 lacks sufficient information to admit or deny and therefore denies the same.

13. In answering Paragraphs 23 through 25, Source 1 admits that the provisions of the fully executed Operating Agreement speak for themselves. As to the remainder of the allegations and the inferences contained in the Paragraphs, Source 1 lacks sufficient information to admit or deny and therefore denies the same.

Development of The Source as a Viable Business

14. In answering Paragraphs 26 and 27, Source 1 denies the same.

15. In answering Paragraphs 28 through 30, Source 1 lacks sufficient information to admit or deny and therefore denies the same.

16. In answering Paragraphs 31 and 32, Source 1 denies the same.

17. In answering Paragraphs 33 and 34, Source 1 admits the same.

Dissolution of The Source

18. In answering Paragraphs 35 through 37, Source 1 admits that disputes arose between its members, that the members elected to dissolve Source 1, which winding up is still ongoing, and that customer purchase orders opened prior to the member voting to dissolve the company are currently being processed (the "Existing Purchase Orders"). As to the remainder of the allegations and inferences contained in the Paragraphs, Source 1 is without sufficient information to admit or deny and therefore denies the same.

19. In answering Paragraph 38, Source 1 denies the same.

20. In answering Paragraph 39, Source 1 admits that the Existing Purchase Orders are assets of Source 1. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

21. In answering Paragraphs 40 through 42, Source 1 denies the same.

22. In answering Paragraph 43 and 44, Source 1 is without sufficient information to admit or deny and therefore denies the same.

23. In answering Paragraph 45, Source 1 admits there was communication among the members regarding the affect the dissolution had on the non-compete agreements. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

24. In answering Paragraph 46, Source 1 admits that the majority of members voted to appoint Hodge as the company's liquidator. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

25. In answering Paragraphs 47 and 48, Source 1 denies the same.

26. In answering Paragraph 49, Source 1 admits that the Plaintiffs correctly identify "valuable trade secrets and intellectual property" as some of the assets that Source 1 owned which were subject to the Court's liquidation order. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

Self-Dealing and Misappropriation of The Source Assets

27. In answering Paragraphs 50 through 54, Source 1 admits that Exhibit C purports to be a filing with the Idaho Secretary of State of an entity named "The Source LLC" listing Hodge, George Brown and Desiree Claiborne as members. As to the remainder of the allegations contained in the Paragraphs, Source 1 is without sufficient information to admit or deny and therefore denies the same.

28. In answering Paragraph 55, Source 1 admits that Hodge is the appointed liquidator for Source 1 and is its manager. As to the remainder of the allegations and inferences contained in the

Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

The Auction of The Source Assets

29. In answering Paragraph 56, Source 1 admits that shaker cups are one of its products, but denies it is the "most important product in the Source 1 product line." Source 1 admits that Technology Plastics, LLC, operated and maintained the molds for Source 1 to produce the shaker cups and currently has possession of those molds. Source 1 also admits that Tony Fernandez from Technology Plastics, LLC, estimated the value of the products produced from the molds to be within the range of $40,000 to $50,000 with sufficient customer orders and that the value of the molds themselves, without customer orders for shaker cups, was approximately $1,900. Source 1 further admits that all of its members received this valuation information prior to the auction. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

30. In answering Paragraphs 57 and 58, Source 1 admits that various emails were exchanged with its members and that the content of the emails speaks for itself. As to the remainder of the allegations and inferences contained in the Paragraphs, Source 1 is without sufficient information to admit or deny and therefore denies the same.

31. In answering Paragraph 59, Source 1 admits the same.

32. In answering Paragraphs 60 and 61, Source 1 admits that various emails were exchanged with its members and that the content of the emails speaks for itself. As to the remainder of the allegations and inferences contained in the Paragraphs, Source 1 is without sufficient information to admit or deny and therefore denies the same.

33. In answering Paragraph 62, Source 1 admits that collectively the auction participants discussed and negotiated the terms of the auction, the bidding procedures, and the descriptions of the assets categorized by the lots. Source 1 admits that after business hours, the night before the auction,

Plaintiffs' counsel sent an email disagreeing with the bidding procedures that Plaintiffs had previously participated in negotiating. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

34. In answering Paragraph 63, Source 1 admits only that in accordance with the bidding procedures, the highest bidders were to tender their bids to Source 1's liquidator by Tuesday, May 22, 2012, at 5 p.m. Source 1 further admits that tender was received by Hodge for the embroidery machine lot and the intellectual property lot. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

35. In answering Paragraph 64, Source 1 admits that the auction participants discussed and negotiated the terms of the auction, the bidding procedures, and the descriptions of the assets contained in the lots. Source 1 further admits that as one of Source 1's initial members present during the development of the shaker molds and the intellectual property that supports the shaker molds, Prehn was a sophisticated auction participant with superior knowledge of the assets being liquidated. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

36. In answering Paragraph 65, Source 1 admits that such communication speaks for itself. As to the remainder of the allegations and inferences contained in the Paragraph, Source 1 is without sufficient information to admit or deny and therefore denies the same.

37. In answering Paragraph 66, Source 1 admits that its liquidator was notified that Prehn had deposited his bid amount with his counsel who was holding the funds in a trust account and that said notice did not comply with the terms of the auction or the bidding procedures previously negotiated. As to the remainder of the allegations and inferences contained in the Paragraph, Source

1 denies the same.

38. In answering Paragraph 67, Source 1 admits the same.

FIRST CLAIM FOR RELIEF

Breach of Agreements for Prehn Loan, Back Salary and Prehn Bonus

39. In answering Paragraph 68, Source 1 realleges Paragraphs 1 through 38 above as though set forth in full herein.

40. In answering Paragraphs 69 through 72, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

SECOND CLAIM FOR RELIEF

Breach of Operating Agreement

41. In answering Paragraph 73, Source 1 realleges Paragraphs 1 through 40 above as though set forth in full herein.

42. In answering Paragraphs 74 through 77, Source 1 is without sufficient information to admit or deny and therefore denies the same.

THIRD CLAIM FOR RELIEF

Breach of Non-Compete Agreement

43. In answering Paragraph 78, Source 1 realleges Paragraphs 1 through 42 above as though set forth in full herein.

44. In answering Paragraphs 79 through 85, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

45. In answering Paragraph 86, Source 1 realleges Paragraphs 1 through 44 above as though set forth in full herein.

46. In answering Paragraphs 87 through 94, Source 1 admits that Hodge has certain fiduciary duties to Source 1. As to the remainder of the allegations contained in the Paragraphs, Source 1 is without sufficient information to admit or deny and therefore denies the same.

FIFTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

47. In answering Paragraph 95, Source 1 realleges Paragraphs 1 through 46 above as though set forth in full herein.

48. Paragraph 96 states a legal conclusion to which no response is required.

49. In answering Paragraphs 97 through 101, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

SIXTH CLAIM FOR RELIEF

Breach of the Loan Agreement between Source 1 and Hodge

50. In answering Paragraph 102, Source 1 realleges Paragraphs 1 through 49 above as though set forth in full herein.

51. In answering Paragraphs 103 through 107, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

SEVENTH CLAIM FOR RELIEF

Violation of Idaho Trade Secrets Act

52. In answering Paragraph 108, Source 1 realleges Paragraphs 1 through 51 above as though set forth in full herein.

53. Paragraphs 109 and 110 state legal conclusions to which no response is required.

54. In answering Paragraphs 111 through 115, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

EIGHTH CLAIM FOR RELIEF

Violations of the Lanham Act

55. In answering Paragraph 116, Source 1 realleges Paragraphs 1 through 54 above as though set forth in full herein.

56. In answering Paragraphs 117 through 122, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

NINTH CLAIM FOR RELIEF

Common Law Trade Name and Trademark Infringement

57. In answering Paragraph 123, Source 1 realleges Paragraphs 1 through 56 above as though set forth in full herein.

58. In answering Paragraphs 124 through 127, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

TENTH CLAIM FOR RELIEF

Unjust Enrichment

59. In answering Paragraph 128, Source 1 realleges Paragraphs 1 through 58 above as though set forth in full herein.

60. In answering Paragraphs 129 through 132, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

ELEVENTH CLAIM FOR RELIEF

Tortious Interference with Contract

61. In answering Paragraph 133, Source 1 realleges Paragraphs 1 through 60 above as though set forth in full herein.

62. In answering Paragraphs 134 through 139, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

TWELFTH CLAIM FOR RELIEF

Constructive Trust

63. In answering Paragraph 140, Source 1 realleges Paragraphs 1 through 62 above as though set forth in full herein.

64. In answering Paragraphs 141 and142, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

THIRTEENTH CLAIM FOR RELIEF

Injunctive Relief

65. In answering Paragraph 143, Source 1 realleges Paragraphs 1 through 64 above as though set forth in full herein.

66. Paragraph 144 states a legal conclusion to which no response is required.

67. In answering Paragraphs 145 through 152, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

FOURTEENTH CLAIM FOR RELIEF

Breach of Warranties

68. In answering Paragraph 153, Source 1 realleges Paragraphs 1 through 67 above as though set forth in full herein.

69. In answering Paragraphs 154 through 156, Source 1 denies the same.

FIFTEENTH CLAIM FOR RELIEF

Unconscionable Auction Contract

70. In answering Paragraph 157, Source 1 realleges Paragraphs 1 through 69 above as though set forth in full herein.

71. In answering Paragraphs 158 through 160, Source 1 denies the same.

SIXTEENTH CLAIM FOR RELIEF

Fraud

72. In answering Paragraph 161, Source 1 realleges Paragraphs 1 through 71 above as though set forth in full herein.

73. In answering Paragraphs 162 through 171, Source 1 denies the same.

SEVENTEENTH CLAIM FOR RELIEF

Promissory Estoppel

74. In answering Paragraph 172, Source 1 realleges Paragraphs 1 through 73 above as though set forth in full herein.

75. In answering Paragraphs 173 through 176, Source 1 denies the same.

EIGHTEENTH CLAIM FOR RELIEF

Equitable Estoppel

76. In answering Paragraph 177, Source 1 realleges Paragraphs 1 through 75 above as though set forth in full herein.

77. In answering Paragraphs 178 through 184, Source 1 denies the same.

NINETEENTH CLAIM FOR RELIEF

Declaratory Relief

78. In answering Paragraph 185, Source 1 realleges Paragraphs 1 through 77 above as though set forth in full herein.

79. In answering Paragraph 186, Source 1 is without sufficient information to admit or deny the allegations contained therein and therefore denies the same.

ATTORNEY FEES

80. In answering Paragraph 187, Source 1 denies the same.

PUNITIVE DAMAGES

81. In answering Paragraph 188, Source 1 denies the same.

AFFIRMATIVE DEFENSES

Source 1 submits the following as defenses to Plaintiffs' claims:

82. Plaintiffs' Complaint fails to state a cause of action against Source 1 upon which relief can be granted.

83. Plaintiffs, one or both, materially breached the Operating Agreement.

84. No valid or enforceable agreement existed between Source 1 and one or both of the Plaintiffs regarding purported loans, back salary, or bonuses.

85. To the extent any valid agreement existed between Source 1 and one or both of the Plaintiffs regarding purported loans, back salary, or bonuses, the Plaintiffs negotiated those agreements in bad faith.

86. To the extent any valid agreement existed between Source 1 and one or both of the Plaintiffs regarding purported loans, back salary, or bonuses, said agreement evidences Plaintiffs' self-dealing and breaches of the duty of loyalty and care.

87. To the extent any valid agreement existed between Source 1 and one or both of the Plaintiffs regarding purported loans, back salary and or bonuses, said agreement failed for lack of consideration

88. To the extent any valid agreement existed between Source 1 and one or both of the Plaintiffs regarding purported loans, back salary and or bonuses, said agreement was satisfied by the doctrine of accord and satisfaction.

89. Plaintiffs' claims are barred by the doctrines of waiver, of unclean hands and of laches.

90. To the extent any valid agreement existed between Source 1 and one or both of the Plaintiffs regarding purported loans, back salary and or bonuses, said agreement is barred by the statute of frauds.

91. Plaintiffs' damages, if any, as participants in the auction of Source 1's asset are the result of Plaintiffs' own self-dealing, bad faith and or negligence.

92. The Source 1's assets that were sold at auction were sold "as-is where-is" without express or implied warranties of merchantability or fitness and without warranties of any kind.

93. Plaintiffs' alleged losses from participating in the auction of Source 1's assets are not valid warranty claims.

94. Plaintiffs' claims and/or damages as a result of participating in the auction, in whole or in part, are barred by the doctrine of assumption of risk.

95. Plaintiffs' reliance on statements made, if any, was not reasonable or justified.

96. Plaintiffs participated, negotiated and accepted the terms of the auction of Source 1's assets, the lot designations, and the bidding procedures for that auction.

97. Plaintiffs, one or both misled auction participants and misrepresented their bid at the auction and now seek a windfall.

98. Plaintiffs negotiated the terms of auction, the lot designations, and the bidding procedures in bad faith.

99. Source 1 made no additional promise or representation regarding its assets beyond the auction terms, the lot designations, and the bidding procedures which were negotiated by the parties with advice of counsel.

100. Plaintiffs' actions were of self-dealing were breaches of their duties of care and of loyalty.

101. Plaintiffs' claims are barred by the parole evidence rule.

102. Plaintiffs' losses, if any, are barred by their own failure to mitigate losses.

103. Plaintiffs' claims are barred by the doctrines of promissory, equitable or quasi estoppel.

104. The discovery process may reveal other affirmative defenses for which Source 1 reserves the right to amend this Answer and pursue said affirmative defenses.

REQUEST FOR ATTORNEYS FEES

105. Source 1 incorporates by reference Paragraphs 1 through 104 above as though fully set forth herein.

106. Source 1 has been required to hire an attorney to defend against Plaintiffs' action. Pursuant to Idaho Code §§ 12-120-121; IRCP 54 and the parties' Operating Agreement, Source 1 is entitled to recover its attorney fees and costs incurred for the defense of this action.

WHEREFORE, having answered, Source 1, prays for relief as follows:

- That Plaintiffs' Second Amended Complaint be dismissed with prejudice;
- That Source 1 be awarded reasonable attorney fees and costs; and
- That the Court grant such further relief as it deems just and proper.

DATED this 19th day of July, 2012.

EVANS KEANE LLP

By _____
Judy L. Geier, Of the Firm
Attorneys for The Source Store, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 2012, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728

VERIFICATION OF THE SOURCE STORE, LLC'S ANSWER

TO PLAINTIFFS' SECOND AMENDED COMPLAINT

The Source Store, LLC, by its managing member, being duly sworn, deposes and says that The Source Store, LLC, is a Defendant in the above-entitled action; that he has authority to verify The Source Store, LLC's Answer to Plaintiffs' Second Amended Complaint; that he has read the above and foregoing responses and that he believes the responses therein stated to be true and

correct to the best of his knowledge and ability.

THE SOURCE STORE, LLC

By: _____
Michael L. Hodge II
Its: Managing Member

SUBSCRIBED AND SWORN to before me this 23rd day of July, 2012.

BRITTANY ROBERTS NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for Idaho
Residing at Meridian
My commission expires 07-01-2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of July, 2012, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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Judy L. Geier

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Attorney for DEFENDANT George M. Brown

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, v. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No.: CV-OC-2012-007728 **GEORGE M. BROWN'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

COMES NOW Defendant George M. Brown ("Brown"), by and through his attorney of record, Charles C. Crafts, and answers Plaintiffs' Second Amended Complaint as follows ("Complaint"):

1. The Complaint fails to state a claim for which relief can be granted against Brown and therefore should be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure and that Plaintiffs recover nothing from Brown as set forth below.

2. Brown denies each and every allegation of the Complaint not specifically herein admitted.

Parties

3. Brown admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Complaint.

Jurisdiction and Venue

4. Brown admits paragraphs 10, 11, 12 and 13 of the Complaint as Brown is a resident of Ada County and jurisdiction is proper.

GENERAL ALLEGATIONS

Formation, Membership, and the Governing Agreements

5. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-4 as though set forth in full verbatim.

6. Brown denies paragraph 14 of the Complaint.

7. Brown denies paragraphs 15 and 16 of the Complaint as he has no personal knowledge of the truth or falsehood of the circumstances associated with the execution of the "Operating Agreement" attached to the Complaint. Brown, however, admits that the Operating Agreement names Defendant Michael L. Hodge II manager, and to the best of Brown's knowledge and belief, Hodges remains in this capacity as of the date of the Complaint.

8. Brown denies paragraph 17 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

9. Brown admits paragraph 18 of the Complaint to the extent that he obtained membership interests in the Company on or around December 31, 2006 ("Brown Interests") and affirmatively asserts that the Brown Interests were obtained in exchange for a non-monetary contribution of professional services ("investment") to The Source Store, LLC ("Source I" or "Company").

10. Brown denies paragraph 19 of the Complaint as he was not a party to the Operating Agreement and no allegations contained in the Complaint demonstrate his agreement thereto.

11. Brown admits paragraphs 20 and 21 of the Complaint in that the Operating Agreement speaks for itself.

12. Brown admits paragraph 22 of the Complaint only to the extent the Operating Agreement speaks for itself and that the "Non-Compete Agreement" attached to the Complaint speaks for itself. However, Brown denies such allegations because he was not a party to either agreement and that neither section 2.3 of the Operating Agreement or the Non-Compete Agreement apply to him. Specifically in this regard, section 2.3 of the Operating Agreement applies to "Initial Members" which are defined therein as Hodge and Prehn under ARTICLE 18 - DEFINITIONS of the Operating Agreement. Therefore, any allegation or claim relating to the Non-Compete Agreement should be dismissed as against Brown on this basis.

13. Brown admits paragraph 23 of the Complaint in that the Operating Agreement speaks for itself, however, Brown denies any knowledge of any information or trade secret sought to be protected and described therein. Further, Brown affirmatively asserts that he had virtually no involvement in the operations, management, development of strategy, business development or any other business activity of Source 1 except as a minority member based on his investment of monetary contributions to the venture.

14. Brown admits paragraphs 24 and 25 and of the Complaint only to the extent the Operating Agreement speaks for itself.

15. Brown denies paragraphs 26, 27, 28, 29, 30, 31, 32, 33, and 34 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein and as he was not a party to any of the arrangements, agreements or contracts described therein.

16. Brown denies paragraph 35 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

17. Brown admits paragraph 36 of the Complaint.

18. Brown denies paragraphs 37 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

19. Brown denies paragraph 38 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

20. Brown denies paragraphs 39, 40, 41, 42, 43, 44, and 45 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

21. Brown admits paragraph 46 of the Complaint only to the extent that Hodge was appointed liquidator and that he voted for Hodge as liquidator, however, Brown denies the remainder of paragraph 46 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the remaining allegations therein.

22. Brown denies paragraph 47, 48 and 49 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

23. Brown admits paragraph 50.

24. Brown denies the allegations of paragraph 51 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein.

25. Brown denies the allegations of paragraph 52, 53 and 54 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein, and further asserts that any liability is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

26. Brown denies the allegations of paragraph 55 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein.

27. Brown denies the allegations of paragraph 56 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein.

28. Brown admits to the allegations of paragraph 57 in that he received a May 5, 2012 email from Hodge.

29. Brown admits to the allegations of paragraph 58 in that he received a May 16, 2012 email from Hodge.

30. Brown denies the allegations of paragraph 59 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein

31. Brown admits to the allegations of paragraph 60 in that he received a May 16, 2012 email from Hodge which contained the sentence quoted in paragraph 60.

32. Brown admits to the allegations of paragraph 61 in that he received a May 16, 2012 email from Hodge which contained the sentence quoted in paragraph 61.

33. Brown admits the allegation in paragraph 62 that on Friday May 18, 2012 the auction proceeded. However, Brown denies the remainder of the allegations of paragraph 62 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein.

34. Brown denies the allegations of paragraphs 63, 64, 65, 66 and 67 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein.

BROWN'S ANSWER TO PLAINTIFFS' FIRST CLAIM OF RELIEF

Breach of Agreements for Prehn Loan, Back Salary, and Prehn Bonus

35. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-34 as though set forth in full verbatim.

36. Brown denies the allegations set forth in paragraphs 68, 69, 70, 71 and 72 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

37. Brown further denies on the basis that no allegations in the Plaintiffs' first claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him.

38. Brown further denies that Plaintiff Prehn suffered any damages as alleged in his First Claim for Relief.

39. Brown further denies that any liability alleged in his First Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

40. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' First Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the agreements alleged by Plaintiff Prehn

in the First Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' SECOND CLAIM FOR RELIEF

Breach of Operating Agreement

41. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-40 as though set forth in full verbatim.

42. Brown denies the allegations set forth in paragraphs 73, 74(a), 74(b), 74(c), 74(d) and 74(e), on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

43. Brown denies the allegations set forth in paragraphs 75, 76 and 77.

44. With regard to paragraph 74 et seq., Brown affirmatively asserts that he has received insufficient, disproportionately low, and inadequate distributions of profits or other payments of any kind from the company despite rights to such.

45. Brown further denies on the basis that no allegations in the Plaintiffs' second claim for relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him.

46. Brown further denies that Plaintiff Prehn suffered any damages as alleged therein.

47. Brown further denies that any liability alleged in Plaintiffs' Second Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and

(5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

48. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Second Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of any alleged breach of the Operating Agreement until the filing and service of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' THIRD CLAIM FOR RELIEF

Breach of Non-Compete Agreement

49. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-48 as though set forth in full verbatim.

50. Brown denies paragraphs 78-82 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

51. Brown further denies on the basis that no allegations in the Plaintiffs' third claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown is neither a party to a non-compete agreement or any other agreement that would prevent him from competition or any of the activities alleged against Defendant Hodge in the Complaint related to the Plaintiffs' third claim for relief.

52. Brown further denies that any liability alleged in his Third Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

53. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Third Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other

liability alleged by Plaintiffs. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the agreements alleged by Plaintiff Prehn in the Third Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

54. Brown denies the allegations set forth in paragraphs 83 and 84 of the Complaint.

55. Brown denies the allegations of paragraph 85 of the Complaint on the basis that he lacks sufficient information to either admit or deny the truth of the allegations set forth therein.

BROWN'S ANSWER TO PLAINTIFFS' FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

56. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-55 as though set forth in full verbatim.

57. Brown denies paragraphs 86-90 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

58. Brown further denies on the basis that no allegations in the Plaintiffs' fourth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him.

59. Brown further denies that any liability alleged in Plaintiffs' Fourth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs

because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

60. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Fourth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests.

61. Brown denies the allegations set forth in paragraphs 91, 92 and 93 of the Complaint.

62. Brown further denies the allegations of paragraph 94 of the Complaint on the basis that he lacks sufficient information to either admit or deny the truth of the allegations set forth therein.

BROWN'S ANSWER TO PLAINTIFFS' FIFTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

63. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-62 as though set forth in full verbatim.

64. Brown denies the allegations of paragraph 95 of the Complaint.

65. Brown admits that as alleged in paragraph 96 of the Complaint that all managers of a manager-managed limited liability company discharge the duties and exercise their rights consistently with their obligation of good faith and fair dealing.

66. Brown denies paragraph 97 to the extent that any alleged duty therein applies to him or that the language of paragraph 97 correctly sets forth applicable law. Brown further denies paragraph 97 alternatively that if such duty is correctly stated and does apply, Brown has not breached said duty.

67. Brown denies paragraph 98 to the extent that any alleged duty therein applies to him or that the language of paragraph 98 correctly sets forth applicable law, and further denies paragraph 98 alternatively that if such duty is correctly stated and does apply, Brown has not breached said duty.

68. Brown denies paragraph 99, 100 and 101 of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' SIXTH CLAIM FOR RELIEF

Breach of Loan Agreement between Source 1 and Hodge

69. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-68 as though set forth in full verbatim.

70. Brown denies paragraph 102 of the Complaint.

71. Brown denies paragraphs 103-107 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

72. Brown further denies on the basis that no allegations in the Plaintiffs' sixth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown is neither a party to the alleged loan agreement or any other loan agreement that would give rise to liability under the Plaintiffs' Sixth Claim for Relief.

73. Brown further denies that any liability alleged in his Sixth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

74. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Sixth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would

otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Sixth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the loan agreements alleged by Plaintiff Prehn in the Sixth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' SEVENTH CLAIM FOR RELIEF

Violation of Idaho Trade Secrets Act

75. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-74 as though set forth in full verbatim.

76. Brown denies paragraph 108 of the Complaint.

77. Brown denies the allegations set forth in paragraph 109 and 110 of the Complaint generally and more specifically as follows:

78. Brown has no knowledge of whether Source 1 has any valid trade secrets or what those trade secrets might be; and

79. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually seek to misappropriate any Source 1 trade secret.

80. Brown denies paragraph 111, 112 and 113 of the Complaint.

81. Brown denies paragraph 114 of the Complaint for injunctive relief as the Plaintiffs have and have acknowledged an adequate remedy at law.

82. Brown denies paragraph 115 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

BROWN'S ANSWER TO PLAINTIFFS' EIGHTH CLAIM FOR RELIEF

Violation of the Lanham Act

83. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-82 as though set forth in full verbatim.

84. Brown denies paragraph 116 of the Complaint.

85. Brown denies the allegations set forth in paragraph 117 and 118 of the Complaint generally and more specifically as follows:

86. Brown has no knowledge of whether Source 1 possess any valid trademarks or other applicable intellectual property; and

87. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually infringe on any Source 1 trademark or other intellectual property.

88. Brown denies paragraph 119 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

89. Brown denies paragraphs 120-122 of the Complaint.

90. Brown further denies on the basis that no allegations in the Plaintiffs' Eighth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown is neither a party to the alleged loan agreement or any other loan agreement that would give rise to liability under the Plaintiffs' Eighth Claim for Relief.

BROWN'S ANSWER TO PLAINTIFFS' NINTH CLAIM FOR RELIEF

Common Law Trade Name and Trademark Infringement

91. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-90 as though set forth in full verbatim.

92. Brown denies paragraph 123 of the Complaint.

93. Brown denies the allegations set forth in paragraph 124 of the Complaint generally and more specifically as follows:

94. Brown has no knowledge of whether Source 1 possess any valid trademarks or other applicable intellectual property; and

95. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually infringe on any Source 1 trademark or other intellectual property.

96. Brown denies paragraph 125, 126 and 127 of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' TENTH CLAIM FOR RELIEF

Unjust Enrichment

97. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-96 as though set forth in full verbatim.

98. Brown denies paragraph 128 of the Complaint.

99. Brown further denies on the basis that no allegations in the Plaintiffs' tenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

100. Brown further denies that any liability alleged in his Tenth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

101. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Tenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that

would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Tenth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the Tenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

102. Brown denies paragraphs 129-132 of the Complaint.

ELEVENTH CLAIM FOR RELIEF

Tortious Interference with Contract

103. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-102 as though set forth in full verbatim.

104. Brown denies paragraph 133 of the Complaint.

105. Brown further denies that any liability alleged in his Eleventh Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear

that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

106. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Eleventh Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Eleventh Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the Eleventh Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

107. Brown denies paragraphs 134-139 of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' TWELFTH CLAIM FOR RELIEF

Constructive Trust

108. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-107 as though set forth in full verbatim.

109. Brown denies paragraph 140 of the Complaint.

110. Brown further denies on the basis that no allegations in the Plaintiffs' twelfth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

111. Brown further denies that any liability alleged in his Twelfth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

112. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' Twelfth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither

provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the Twelfth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

113. Brown denies paragraphs 141 and 142 of the Complaint.

BROWN'S ANSWER TO PLAINTIFFS' THIRTEENTH CLAIM FOR RELIEF

Injunctive Relief

114. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-113 as though set forth in full verbatim.

115. Brown denies paragraph 143 of the Complaint.

116. Brown admits paragraph 144 of the Complaint only to the extent and in that applicable Idaho law speaks for itself. Brown denies that any such provision in the law applies to any of the actions of Brown or allegations against him.

117. Brown admits paragraph 145 of the Complaint only to the extent and in that the Operating Agreement speaks for itself. Brown denies that any such provision in the Operating Agreement applies to any of the actions of Brown or allegations against him.

118. Brown denies the allegations set forth in paragraphs 146 and 147 of the Complaint generally and more specifically as follows:

119. Brown has no knowledge of whether Source 1 possess any valid trademarks, other applicable intellectual property or other items named in paragraphs 146 and 147;

120. Brown has had no involvement or prevention of any bidding process;

121. Brown denies on the basis that he lacks sufficient information to confirm or deny the allegations set forth in paragraphs 146 and 147 of the Complaint; and

122. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually infringe on any Source 1 trademark or other intellectual property.

123. Brown denies paragraph 148 of the Complaint.

124. Brown admits paragraph 149 of the Complaint in that the Idaho Limited Liability Company Act speaks for itself.

125. Brown denies paragraphs 150, 150(a), 150(b), 150(c), 150(d), 150(e), 151 and 152.

BROWN'S ANSWER TO PLAINTIFFS' FOURTEENTH CLAIM FOR RELIEF

Breach of Warranties

126. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-125 as though set forth in full verbatim.

127. Brown denies paragraph 153 of the Complaint.

128. Brown further denies on the basis that no allegations in the Plaintiffs' fourteenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

129. Brown further denies that any liability alleged in his fourteenth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company

as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

130. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' fourteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the fourteenth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the fourteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

131. Brown denies paragraphs 154-156 of the Complaint on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

BROWN'S ANSWER TO PLAINTIFFS' FIFTEENTH CLAIM FOR RELIEF

Unconscionable Auction Contract

132. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-131 as though set forth in full verbatim.

133. Brown denies paragraph 157 of the Complaint.

134. Brown further denies on the basis that no allegations in the Plaintiffs' fifteenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

135. Brown further denies that any liability alleged in his fifteenth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

136. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' fifteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the fifteenth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the fifteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

137. Brown denies paragraphs 158-160 of the Complaint on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

BROWN'S ANSWER TO PLAINTIFFS' SIXTEENTH CLAIM FOR RELIEF

Fraud

138. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-137 as though set forth in full verbatim.

139. Brown denies paragraph 161 of the Complaint.

140. Brown further denies on the basis that no allegations in the Plaintiffs' sixteenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be

dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

141. Brown further denies that any liability alleged in his sixteenth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

142. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' sixteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the sixteenth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own

investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the sixteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

143. Brown denies paragraphs 162-171 of the Complaint on the basis that he lacks sufficient information to admit or deny the allegations contained therein..

BROWN'S ANSWER TO PLAINTIFFS' SEVENTEENTH CLAIM FOR RELIEF

Promissory Estoppel

144. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-143 as though set forth in full verbatim.

145. Brown denies paragraph 172 of the Complaint.

146. Brown further denies on the basis that no allegations in the Plaintiffs' seventeenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

147. Brown further denies that any liability alleged in his seventeenth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition;

Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

148. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' seventeenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the seventeenth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the seventeenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

149. Brown denies the allegations set forth in paragraph 173 of the Complaint generally and more specifically as follows:

150. Brown has no knowledge of whether Source 1 possess any valid trademarks or other applicable intellectual property; and

151. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have

access to nor did he in any manner intend or actually infringe on any Source 1 trademark or other intellectual property.

152. Brown denies paragraphs 174-176 of the Complaint on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

BROWN'S ANSWER TO PLAINTIFFS' EIGHTEENTH CLAIM FOR RELIEF

Equitable Estoppel

153. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-152 as though set forth in full verbatim.

154. Brown denies paragraph 177 of the Complaint.

155. Brown further denies on the basis that no allegations in the Plaintiffs' eighteenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Brown further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

156. Brown further denies that any liability alleged in his eighteenth Claim for Relief is inapplicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho LImited Liability Company Act (the "Act"), Brown has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition;

Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Brown.

157. As provided in Idaho Code Section 30-6-409(6), Brown further denies any liability under Plaintiffs' eighteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the manager, Hodge, after full disclosure of material facts that would give rise to liability on his part. Further, Brown denies that he has in fact ratified any act or decision by manager, Hodge, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the eighteenth Claim for Relief. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Brown was not aware of the actions alleged by Plaintiff Prehn in the eighteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

158. Brown denies the allegations set forth in paragraphs 178-180 of the Complaint generally and more specifically as follows:

159. Brown has no knowledge of whether Source 1 possess any valid trademarks or other applicable intellectual property; and

160. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have

access to nor did he in any manner intend or actually infringe on any Source 1 trademark or other intellectual property.

161. Brown denies paragraphs 181-184 of the Complaint on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

BROWN'S ANSWER TO PLAINTIFFS' NINTEENTH CLAIM FOR RELIEF

Declaratory Relief

162. Brown restates and alleges here the admissions and denials of the preceding paragraphs 1-161 as though set forth in full verbatim.

163. Brown denies paragraph 185 of the Complaint.

164. Brown denies the allegation set forth in paragraph 186 of the Complaint generally and more specifically as follows:

165. Brown has no knowledge of whether Source 1 possess any valid trademarks or other applicable intellectual property; and

166. Brown affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually infringe on any Source 1 trademark or other intellectual property.

BROWN'S ANSWER TO PLAINTIFFS' PETITION FOR

ATTORNEY FEES AND PUNITIVE DAMAGES

167. Brown denies paragraphs 187 and 188 of the Complaint.

AFFIRMATIVE DEFENSES

168. Plaintiffs' Second Amended Complaint fails to state a cause of action against Brown upon which relief can be granted.

169. Plaintiffs' claims are barred by the doctrine of unclean hands and cannot maintain an action in equity. Plaintiffs have unclean hands by their actions of their unjust enrichment, breach of contract, breach of fiduciary duty, and breach of covenant of good faith and fair dealing.

170. Plaintiffs' claims and/or damages, in whole or in part, are barred by the statute of frauds.

171. Plaintiffs' claims and/or damages, in whole or in part, are barred by the doctrine of accord and satisfaction.

172. Plaintiffs' claims and/or damages, in whole or in part, are barred for lack of consideration.

173. Plaintiffs' claims are barred by the doctrine of waiver and ratification. Plaintiffs voluntarily waived their causes of action by engaging in activities inconsistent with their stated causes of action contained in the Complaint including but not limited to a fair and agreed upon auction and bidding process for the Company's assets ("Auction").

174. Plaintiffs' claims are barred by the doctrine of estoppel by reason of their agreement to the Auction and other actions as set forth in this Answer.

175. Plaintiffs' claims are barred by the doctrine of laches. Plaintiffs are guilty of laches and unreasonable delay in bringing this action and in asserting any cause of action against Brown and that such laches and unreasonable delay were without good cause and substantially prejudiced Brown.

176. Plaintiffs' claims are barred, in whole or in part, by its failure to mitigate its damages. Plaintiffs failed to take reasonable steps to mitigate the claimed or alleged damages.

177. Plaintiffs have released Brown of any liability by engaging in and agreeing to the Auction, its terms and definitions of the assets in conjunction with such Auction.

178. Plaintiffs' claims and/or damages, in whole or in part, are barred by the assumption of risk doctrine in participating in the auction.

179. Consistent with Brown's Counterclaim against Plaintiffs set forth below, any liability, although herein denied, of Brown to Plaintiffs must be set off against damages incurred by him.

180. Plaintiffs' causes of action are prematurely brought and are not ripe for adjudication.

181. Plaintiffs' causes of action should be barred as Plaintiffs engaged in, assisted in and caused the Company to engage in activities outside of its stated purpose, powers and scope of activities allowed under its articles of organization, operating agreement and Idaho law. Specifically these activities include but are not limited to entering into agreements underlying of the "Prehn Loan," "Prehn Back Salary," and "Prehn Bonus" as such are alleged and defined in the Complaint.

182. The discovery process may reveal other affirmative defenses for which Brown reserves the right to amend this Answer and pursue said affirmative defenses.

ATTORNEY FEES

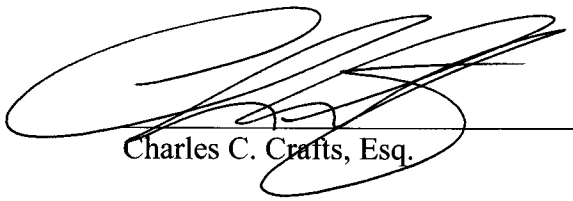
183. The Complaint along with the necessity of filing this Answer has required Brown to retain counsel to represent his interests. Brown is therefore entitled to the recovery of attorney fees and costs pursuant to the terms of the Operating Agreement and/or Idaho Code Sections 12-120(3) and/or 12-121.

PRAYER FOR RELIEF

Based on the foregoing, the Plaintiffs pray for relief as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice and the Plaintiffs take nothing therefrom.
2. Award Brown costs of suit and attorney fees under the Operating Agreement, Idaho Code Sections 12-120(3), 12-121 and other applicable statute against Counter-Defendants and Cross-Defendants.
3. Award Brown such other and further relief the Court deems just and proper.

DATED this 2 August 2012



Charles C. Crafts, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Boise, Idaho; that on August 2, 2012, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon, by hand delivery, or by transmitting by facsimile as set forth below.

Michael O. Roe, Esq. Moffatt, Thomas, Barrett, Rock & Fields, Chtd. PO Box 829 Boise, ID 83701 FAX: (208) 385-5384	[X] U.S. Mail [ ] Hand Delivery [ ] Facsimile [ ] Courthouse Box
Brian L. Boyle, Esq. 903 E. Winding Creek Dr., Suite 150 Eagle, ID 83616 FAX: (208) 361-8185	[X] U.S. Mail [ ] Hand Delivery [ ] Facsimile [ ] Courthouse Box
E. Don Copple, Esq. Davison, Copple, Copple & Copple P.O. Box 1583 Boise, Idaho 83701 Fax: (208) 386-9428	[X] U.S. Mail [ ] Hand Delivery [ ] Facsimile [ ] Courthouse Box
Evans Keane LLP 1405 W. Main Street PO Box 959 Boise ID, 83701-0959	[X] U.S. Mail [ ] Hand Delivery [ ] Facsimile [ ] Courthouse Box

Crafts Law, Inc.

By: _____
Charles C. Crafts, Esq.

CF NO 8/7/12 LW
owes $ Fee #2 8/15/12 LW

NO. _____ FILED P.M. 4:06
A.M. _____
AUG 14 2012
CHRISTOPHER D. RICH, Clerk
By ANNAMARIE MEYER
DEPUTY

BRIAN L. BOYLE, ESQ.
903 E. Winding Creek Dr., Suite 150
Eagle, ID 83616
Telephone (208) 419-3619
Fax (208) 361-8185
Email brianboylelaw@gmail.com
ISB No. 6233

Attorney for DEFENDANT CHRISTOPHER CLAIBORNE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CV0C1200 7728

Case No.: ~~CV-DR-2012-00623~~

ANSWER TO SECOND AMENDED COMPLAINT, COUNTERCLAIM AND CROSSCLAIM

ORIGINAL

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants,

MM

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II.

Crossdefendants.

COMES NOW Defendant Christopher Claiborne ("Claiborne"), by and through his attorney of record, Brian L. Boyle, and answers Plaintiffs' First Amended Complaint as follows ("Complaint"):

1. The Complaint fails to state a claim for which relief can be granted against Claiborne and therefore should be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure and that Plaintiffs recover nothing from Claiborne but rather pay him according to his Counterclaim and Crossclaim as set forth below.

2. Claiborne denies each and every allegation of the Complaint not specifically herein admitted.

Parties

3. Claiborne admits paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Complaint. With regard to such paragraphs regarding the parties, the following definitions shall apply throughout this Answer, Counterclaim and Cross-Claim:

    1. Plaintiff and Counterdefendant Donnelly Prehn ("Prehn").

    2. Plaintiff and Counterdefendant Dwight Bandak ("Bandak").

3. Defendant and Crossdefendant, The Source Store, LLC ("Source I" or the "Company").

4. Defendant and Crossdefendant Michael L. Hodge II ("Hodge").

5. Defendant George M. Brown ("Brown").

6. Defendant The Source, LLC ("Source II").

Jurisdiction and Venue

4. Claiborne denies paragraphs 10, 11, 12 and 13 of the Complaint as such allegations are not applicable to Claiborne and jurisdiction and venue are improper with regard to Claiborne.

GENERAL ALLEGATIONS

Formation, Membership, and the Governing Agreements

5. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-4 as though set forth in full verbatim.

6. Claiborne denies paragraph 14 of the Complaint.

7. Claiborne denies paragraphs 15 and 16 of the Complaint as he has no personal knowledge of the truth or falsehood of the circumstances associated with the execution of the "Operating Agreement" attached to the Complaint except to the extent that the Operating Agreement speaks for itself. Claiborne, however, admits that the Operating Agreement names Defendant Michael L. Hodge II manager, and to the best of Claiborne's knowledge and belief, Hodge remains in this capacity as of the date of the Complaint. In this regard, however, it is Claiborne's understanding that Prehn acted throughout the existence and

operation of the Company as a "manager" as such is defined by Idaho Code Sec. 30-6-102(10) and referenced and related provisions to such statute.

8. Claiborne admits paragraph 17 to the extent that he obtained a 9.8% membership interests in the Company on or around April 22, 2004 ("Claiborne Interests") and affirmatively asserts that the Claiborne Interests were obtained in exchange for a contribution to The Source Store, LLC ("Source I" or "Company") of significant monetary contributions to the venture, in excess of $175,000 or in an amount to be proven at trial ("Claiborne Contribution"). Claiborne also affirmatively states that Prehn and Hodge represented to him a pre-investment Company valuation of $2,000,000, a representation that Claiborne asserts was substantially exaggerated by both Prehn and Hodge as a means of inducing him to invest in the Company.

9. Claiborne denies paragraph 18 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

10. Claiborne denies paragraph 19 of the Complaint as he was not a party to the Operating Agreement and no allegations contained in the Complaint demonstrate his agreement thereto.

11. Claiborne admits paragraphs 20 and 21 of the Complaint in that the Operating Agreement speaks for itself.

12. Claiborne admits paragraph 22 of the Complaint only to the extent the Operating Agreement speaks for itself and that the "Non-Compete Agreement" attached to the Complaint speaks for itself. However, Claiborne denies such allegations because he was not a party to either agreement and that neither section 2.3 of

the Operating Agreement or the Non-Compete Agreement apply to him. Specifically in this regard, section 2.3 of the Operating Agreement applies to "Initial Members" which are defined therein as Hodge and Prehn under ARTICLE 18 - DEFINITIONS of the Operating Agreement. Therefore, any allegation or claim relating to the Non-Compete Agreement should be dismissed as against Claiborne on this basis.

13. Claiborne admits paragraph 23 of the Complaint in that the Operating Agreement speaks for itself, however, Claiborne denies any knowledge of any information or trade secret sought to be protected and described therein. Further, Claiborne affirmatively asserts that he had virtually no involvement in the operations, management, development of strategy, business development or any other business activity of Source I except as a minority member based on his investment of monetary contributions to the venture. Claiborne also affirmatively alleges that both Prehn and Hodge failed to properly maintain proper communication and provide information and reports as required by the Operating Agreement, Article 3 and its subsections as well as Idaho Code Section 30-6-410.

14. Claiborne admits paragraphs 24 and 25 and of the Complaint only to the extent the Operating Agreement speaks for itself.

15. Claiborne denies paragraphs 26, 27, 28, 29, 30, 31, 32, 33, and 34 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein and as he was not a party to any of the arrangements, agreements or contracts described therein. However, Claiborne

affirmatively alleges that both Hodge and Prehn as managers of the Company had and continue to have a fiduciary duty to Claiborne as a non-manager member under Idaho Code Section 30-6-409(4) of good faith and fair dealing which was breached by the contracts and agreements described therein.

16. Claiborne denies paragraph 35 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

17. Claiborne admits paragraph 36 of the Complaint that the members voted to dissolve the Company. Claiborne also affirmatively alleges that Prehn and Hodge as managers of the Company failed to comply with the duties required of them in their capacity as managers as defined in Idaho Code Section 30-6-409 and that such failure led to the financial and operational problems requiring the Company's dissolution.

18. Claiborne denies paragraphs 37, 38, 39, 40, 41, 42, 43, 44, and 45 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

19. Claiborne admits paragraph 46 of the Complaint only to the extent that Hodge was appointed liquidator and that he voted for Hodge as liquidator, however, Claiborne denies the remainder of paragraph 46 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the remaining allegations therein.

20. Claiborne denies paragraph 47, 48 and 49 of the Complaint as he lacks sufficient information to admit or deny the truth of the allegations contained therein.

21. Claiborne denies the allegations of paragraphs 50, 51, 52, 53, 54 and 55 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein.

22. Claiborne denies the allegations of paragraphs 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67 of the Complaint on the basis that he lacks sufficient information to admit or deny the truth of the allegations contained therein EXCEPT that Claiborne:

1. Was notified of the auction described therein;
2. Despite requests for such from the Company, Prehn and Hodge, did not feel that he had sufficient information with regard to the nature of the assets or their values; and therefore
3. Did not participate in the auction in any meaningful or material way.

CLAIBORNE'S ANSWER TO PLAINTIFFS' FIRST CLAIM OF RELIEF

Breach of Agreements for Prehn Loan, Back Salary, and Prehn Bonus

23. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-22 as though set forth in full verbatim.

24. Claiborne denies the allegations of paragraph 68 of the Complaint.

25. Claiborne denies the allegations set forth in paragraphs 69, 70, 71, and 72 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

26. Claiborne further denies on the basis that no allegations in the Plaintiffs' first claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him.

27. Claiborne further denies that Plaintiff Prehn suffered any damages as alleged in his First Claim for Relief.

28. Claiborne further denies that any liability alleged in his First Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

29. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' First Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was

neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the agreements alleged by Plaintiff Prehn in the First Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' SECOND CLAIM FOR RELIEF

Breach of Operating Agreement

30. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-29 as though set forth in full verbatim.

31. Claiborne denies the allegations of paragraph 73 of the Complaint.

32. Claiborne denies the allegations set forth in paragraphs 74(a), 74(b), 74(c), 74(d), and 74(e) on the basis that he lacks sufficient information to admit or deny the allegations contained therein. Claiborne also alleges affirmatively that the allegations against Hodge set forth in paragraph 74 and its subsections apply equally to Prehn as both engaged in the activities alleged by the Plaintiffs therein as managers of the Company.

33. Claiborne denies the allegations set forth in paragraphs 75, 76 and 77.

34. With regard to paragraph 73 et seq., Claiborne affirmatively asserts that he has received insufficient, disproportionately low, and inadequate distributions of profits or other payments of any kind from the company despite rights to such.

35. Claiborne further denies on the basis that no allegations in the Plaintiffs' second claim for relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him.

36. Claiborne further denies that Plaintiff Prehn suffered any damages as alleged therein.

37. Claiborne further denies that any liability alleged in Plaintiffs' Second Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

38. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Second Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by

managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of any alleged breach of the Operating Agreement until the filing and service of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' THIRD CLAIM FOR RELIEF

Breach of Non-Compete Agreement

39. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-38 as though set forth in full verbatim.

40. Claiborne denies paragraph 78 of the Complaint.

41. Claiborne denies paragraphs 79-85 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

42. Claiborne further denies on the basis that no allegations in the Plaintiffs' third claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne is neither a party to a non-compete agreement or any other agreement that would prevent him from competition or any of the activities alleged against Defendant Hodge in the Complaint related to the Plaintiffs' third claim for relief.

43. Claiborne further denies that any liability alleged in his Third Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

44. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Third Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except

as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the agreements alleged by Plaintiff Prehn in the Third Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' FOURTH CLAIM FOR RELIEF

Breach of Fiduciary Duty

45. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-44 as though set forth in full verbatim.

46. Claiborne denies paragraph 86 of the Complaint.

47. Claiborne admits paragraphs 87, 88, 89, and 90 of the Complaint.

48. Claiborne denies paragraphs 91-94 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

49. Claiborne further denies on the basis that no allegations in the Plaintiffs' fourth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him.

50. Claiborne further denies that any liability alleged in Plaintiffs' Fourth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member.

Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

51. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Fourth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any fiduciary duty, duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests.

CLAIBORNE'S ANSWER TO PLAINTIFFS' FIFTH CLAIM FOR RELIEF

Breach of Covenant of Good Faith and Fair Dealing

52. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-51 as though set forth in full verbatim.

53. Claiborne denies the allegations of paragraph 95 of the Complaint.

54. Claiborne admits that as alleged in paragraph 96 of the Complaint that all managers of a manager-managed limited liability company discharge the duties and exercise their rights consistently with their obligation of good faith and fair dealing.

55. Claiborne denies paragraph 97 to the extent that any alleged duty therein applies to him or that the language of paragraph 97 correctly sets forth applicable law. Claiborne further denies paragraph 97 alternatively that if such duty is correctly stated and does apply, Claiborne has not breached said duty.

56. Claiborne denies paragraph 98 to the extent that any alleged duty therein applies to him or that the language of paragraph 98 correctly sets forth applicable law, and further denies paragraph 98 alternatively that if such duty is correctly stated and does apply, Claiborne has not breached said duty.

57. Claiborne denies paragraph 99, 100 and 101 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' SIXTH CLAIM FOR RELIEF

Breach of Loan Agreement between Source I and Hodge

58. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-57 as though set forth in full verbatim.

59. Claiborne denies paragraph 102 of the Complaint.

60. Claiborne denies paragraphs 103-107 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

61. Claiborne further denies on the basis that no allegations in the Plaintiffs' sixth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne is neither a party to the alleged loan agreement or any other loan agreement that would give rise to liability under the Plaintiffs' Sixth Claim for Relief.

62. Claiborne further denies that any liability alleged in his Sixth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

63. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Sixth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would

otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Sixth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the loan agreements alleged by Plaintiff Prehn in the Sixth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' SEVENTH CLAIM FOR RELIEF

Violation of Idaho Trade Secrets Act

64. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-63 as though set forth in full verbatim.

65. Claiborne denies paragraph 108 of the Complaint.

66. Claiborne denies the allegations set forth in paragraph 109 of the Complaint generally and more specifically as follows:

67. Claiborne has no knowledge of whether Source I has any valid trade secrets or what those trade secrets might be; and

68. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own

investment and interests and that he did not have access to nor did he in any manner intend or actually seek to misappropriate any Source I trade secret.

69. Claiborne admits paragraph 110 of the Complaint.

70. Claiborne denies paragraphs 111, 112, and 113 of the Complaint.

71. Claiborne denies paragraph 114 of the Complaint for injunctive relief as the Plaintiffs have and have acknowledged an adequate remedy at law.

72. Claiborne denies paragraph 115 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

CLAIBORNE'S ANSWER TO PLAINTIFFS' EIGHTH CLAIM FOR RELIEF

Violation of the Lanham Act

73. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-72 as though set forth in full verbatim.

74. Claiborne denies paragraph 116 of the Complaint.

75. Claiborne denies the allegations set forth in paragraph 117 of the Complaint generally and more specifically as follows:

76. Claiborne has no knowledge of whether Source I possess any valid trademarks or other applicable intellectual property; and

77. Claiborne affirmatively asserts that his involvement with the Company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any

manner intend or actually infringe on any Source I trademark or other intellectual property.

78. Claiborne denies paragraph 118 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

79. Claiborne denies paragraphs 119, 120 and 121 of the Complaint.

80. Claiborne denies paragraph 122 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

CLAIBORNE'S ANSWER TO PLAINTIFFS' NINTH CLAIM FOR RELIEF

Common Law Trade Name and Trademark Infringement

81. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-80 as though set forth in full verbatim.

82. Claiborne denies paragraph 123 of the Complaint.

83. Claiborne denies the allegations set forth in paragraph 124 of the Complaint generally and more specifically as follows:

84. Claiborne has no knowledge of whether Source I possess any valid trademarks or other applicable intellectual property; and

85. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually infringe on any Source I trademark or other intellectual property.

86. Claiborne denies paragraph 125, 126, and 127 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' TENTH CLAIM FOR RELIEF

Unjust Enrichment

87. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-86 as though set forth in full verbatim.

88. Claiborne denies paragraph 128 of the Complaint.

89. Claiborne further denies on the basis that no allegations in the Plaintiffs' tenth claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

90. Claiborne further denies that any liability alleged in his Tenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

91. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Tenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Tenth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff Prehn in the Tenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

92. Claiborne denies paragraphs 129, 130, and 131 of the Complaint.

93. Claiborne denies paragraph 132 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

ELEVENTH CLAIM FOR RELIEF

Tortious Interference with Contract

94. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-93 as though set forth in full verbatim.

95. Claiborne denies paragraph 133 of the Complaint.

96. Claiborne further denies on the basis that no allegations in the Plaintiffs' eleventh claim of relief name him or allege any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

97. Claiborne further denies that any liability alleged in his Eleventh Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

98. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Eleventh Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability

alleged by Plaintiffs in the Eleventh Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff Prehn in the Eleventh Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

99. Claiborne denies paragraphs 134, 135, 136, 137, and 138 of the Complaint.

100. Claiborne denies paragraph 139 on the basis that he lacks sufficient information to admit or deny the allegations contained therein.

CLAIBORNE'S ANSWER TO PLAINTIFF'S TWELFTH CLAIM FOR RELIEF

Constructive Trust

101. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-100 as though set forth in full verbatim.

102. Claiborne denies paragraph 140 of the Complaint.

103. Claiborne further denies on the basis that no allegations in the Plaintiffs' twelfth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

104. Claiborne further denies that any liability alleged in his Twelfth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability

company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

105. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Twelfth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff

Prehn in the Twelfth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

106. Claiborne denies paragraphs 141 and 142 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFF'S THIRTEENTH CLAIM FOR RELIEF

Injunctive Relief

107. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-106 as though set forth in full verbatim.

108. Claiborne denies paragraph 143 of the Complaint.

109. Claiborne admits paragraph 144 of the Complaint only to the extent and in that applicable Idaho law speaks for itself. Claiborne denies that any such provision in the law applies to any of the actions of Claiborne or allegations against him.

110. Claiborne admits paragraph 145 of the Complaint only to the extent and in that the Operating Agreement speaks for itself. Claiborne denies that any such provision in the Operating Agreement applies to any of the actions of Claiborne or allegations against him.

111. Claiborne denies the allegations set forth in paragraph 146 of the Complaint.

112. Claiborne has no knowledge of whether Source I possess any confidential information or other applicable intellectual property or other items named in paragraph 147 and as such denies the allegations set forth therein. Claiborne further denies any allegations of wrongdoing on his part alleged in paragraph 147;

113. Claiborne has had no involvement in the prevention of any bidding process or deprivation of any rights of the Plaintiffs and further denies the allegations in paragraph 147;

114. Claiborne denies on the basis that he lacks sufficient information to confirm or deny the allegations set forth in paragraphs 146 and 147 of the Complaint; and

115. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests and that he did not have access to nor did he in any manner intend or actually infringe on any Source I trademark or other intellectual property.

116. Claiborne denies paragraphs 148, 149, 150, 151 and 152 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' FOURTEENTH CLAIM FOR RELIEF

Breech of Warranties

117. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-116 as though set forth in full verbatim.

118. Claiborne denies paragraph 153 of the Complaint.

119. Claiborne further denies on the basis that no allegations in the Plaintiffs' fourteenth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

120. Claiborne further denies that any liability alleged in his Fourteenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

121. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Fourteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic

high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff Prehn in the Fourteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

122. Claiborne denies paragraphs 154, 155 and 156 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' FIFTEENTH CLAIM FOR RELIEF

Unconscionable Auction Contract

123. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-122 as though set forth in full verbatim.

124. Claiborne denies paragraph 157 of the Complaint.

125. Claiborne further denies on the basis that no allegations in the Plaintiffs' fifteenth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

126. Claiborne further denies that any liability alleged in his Fifteenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the

manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

127. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Fifteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff Prehn in the Fifteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

128. Claiborne denies paragraphs 158, 159 and 160 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' SIXTEENTH CLAIM FOR RELIEF

Fraud

129. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-128 as though set forth in full verbatim.

130. Claiborne denies paragraph 161 of the Complaint.

131. Claiborne further denies on the basis that no allegations in the Plaintiffs' sixteenth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

132. Claiborne further denies that any liability alleged in the Sixteenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

133. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Sixteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and

Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff Prehn in the Fourteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

134. Claiborne denies paragraphs 162-171 of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFFS' SEVENTEENTH CLAIM FOR RELIEF

Promissory Estoppel

135. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-134 as though set forth in full verbatim.

136. Claiborne denies paragraph 172 of the Complaint.

137. Claiborne further denies on the basis that no allegations in the Plaintiffs' seventeenth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

138. Claiborne further denies that any liability alleged in the Seventeenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

139. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Seventeenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic

high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiff Prehn in the Fourteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

140. Claiborne denies paragraphs 173-176 of the Complaint on the basis that he does not have sufficient knowledge to admit or deny the allegations contained in such paragraphs.

CLAIBORNE'S ANSWER TO PLAINTIFFS' EIGHTEENTH CLAIM FOR RELIEF

Equitable Estoppel

141. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-140 as though set forth in full verbatim.

142. Claiborne denies paragraph 177 of the Complaint.

143. Claiborne further denies on the basis that no allegations in the Plaintiffs' eighteenth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

144. Claiborne further denies that any liability alleged in the Eighteenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited

liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member. Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

145. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Eighteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Twelfth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and

interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiffs in the Eighteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

146. Claiborne denies paragraphs 178-184 of the Complaint on the basis that he does not have sufficient knowledge to admit or deny the allegations contained in such paragraphs.

CLAIBORNE'S ANSWER TO PLAINTIFFS' NINETEENTH CLAIM FOR RELIEF

Declaratory Relief

147. Claiborne restates and alleges here the admissions and denials of the preceding paragraphs 1-146 as though set forth in full verbatim.

148. Claiborne denies paragraphs 185 and 186 of the Complaint on the basis that he lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief..

149. Claiborne further denies on the basis that no allegations in the Plaintiffs' nineeenth claim of relief apply to any actions or any wrongdoing on his part, and as such, the claim should be dismissed with regard to him. Claiborne further lacks sufficient knowledge to admit or deny the allegations contained in the Claim for Relief.

150. Claiborne further denies that any liability alleged in the Nineteenth Claim for Relief is applicable to him due to the fact that as a "manager managed" limited liability company as such is defined by Title 30 -- Corporations, Chapter 6 -- Idaho Limited Liability Company Act (the "Act"), Claiborne has no fiduciary duty or duty of care to the Plaintiffs because he is a non-manager member.

Specifically, Idaho Code Section 30-6-409(7)(a) states that in a manager-managed limited liability company, "Subsections (1), (2), (3) and (5) of this section apply to the manager or managers and not the members." It is clear that Subsection (1) refers to fiduciary duties of loyalty and care; Subsection (2) refers to the duty to account, duty to avoid adverse interest and duty to avoid competition; Subsection (3) refers to duties of care in winding up; and Subsection (5) refers to the fairness defense available to managers thereunder, none of which apply to Claiborne.

151. As provided in Idaho Code Section 30-6-409(6), Claiborne further denies any liability under Plaintiffs' Nineteenth Claim for Relief as there are no allegations or facts demonstrated that he ratified any actions by the managers, Hodge and Prehn, after full disclosure of material facts that would give rise to liability on his part. Further, Claiborne denies that he has in fact ratified any act or decision by managers, Hodge and Prehn, of any specific act or transaction that would otherwise violate any duty of loyalty, contractual obligation, or other liability alleged by Plaintiffs in the Nineteenth Claim for Relief. Claiborne affirmatively asserts that his involvement with the company was solely that of an investor and that he was neither provided nor did he have access to anything but sporadic high level summary information, was uninvolved with the activities of the company except as that of an investor seeking to protect his own investment and interests. Specifically, Claiborne was not aware of the actions alleged by Plaintiffs in the Eighteenth Claim of Relief nor was he aware of any alleged breach until the filing and service of the Complaint.

CLAIBORNE'S ANSWER TO PLAINTIFF'S PETITION FOR ATTORNEY FEES AND PUNITIVE DAMAGES

152. Claiborne denies paragraphs 187 and 188 of the Complaint.

AFFIRMATIVE DEFENSES

153. Plaintiffs' claims are barred by the doctrine of unclean hands and cannot maintain an action in equity. Plaintiffs have unclean hands by their actions of their unjust enrichment, breach of contract, breach of fiduciary duty, and breach of covenant of good faith and fair dealing.

154. Plaintiffs' claims are barred by the doctrine of waiver and ratification. Plaintiffs voluntarily waived their causes of action by engaging in activities inconsistent with their stated causes of action contained in the Complaint including but not limited to a fair and agreed upon auction and bidding process for the Company's assets ("Auction").

155. Plaintiffs' claims are barred by the doctrine of estoppel by reason of their agreement to the Auction and other actions as set forth in this Answer, Counterclaim and Cross-Claim.

156. Plaintiffs' claims are barred by the doctrine of laches. Plaintiffs are guilty of laches and unreasonable delay in bringing this action and in asserting any cause of action against Claiborne and that such laches and unreasonable delay were without good cause and substantially prejudiced Claiborne.

157. Plaintiffs' claims are barred, in whole or in part, by its failure to mitigate its damages. Plaintiffs failed to take reasonable steps to mitigate the claimed or alleged damages.

158. Plaintiffs have released Claiborne of any liability by engaging in and agreeing to the Auction, its terms and definitions of the assets in conjunction with such Auction.

159. Consistent with Claiborne's Counterclaim against Plaintiffs set forth below, any liability, although herein denied, of Claiborne to Plaintiffs must be set off against damages incurred by him.

160. Plaintiffs' causes of action are prematurely brought and are not ripe for adjudication.

161. Plaintiffs' causes of action should be barred as Plaintiffs engaged in, assisted in and caused the Company to engage in activities outside of its stated purpose, powers and scope of activities allowed under its articles of organization, operating agreement and Idaho law. Specifically these activities include but are not limited to entering into agreements underlying of the "Prehn Loan," "Prehn Back Salary," and "Prehn Bonus" as such are alleged and defined in the Complaint.

COUNTERCLAIMS AGAINST PLAINTIFFS AND CROSS CLAIMS AGAINST CO-DEFENDANTS

ADDITIONAL AND GENERAL ALLEGATIONS

162. Claiborne restates and adopts the preceding paragraphs 1-161 as though set forth in full verbatim. In addition to the affirmative allegations made throughout Claiborne's Answer to the Plaintiffs' Second Amended Complaint, Claiborne alleges as follows:

163. At the request and based upon the representations of Hodge and Prehn, Claiborne contributed $175,000 in cash to Source I. In exchange, Claiborne

received a 9.8% voting interest (19,600 Common Membership Shares as defined in section 5.1 of the Company's Operating Agreement ("Claiborne Share")) in the Company possessing the following rights without exclusion as set forth in the Company Operating Agreement. The Any reference to "section" refers to the numbered section of the Company's Operating Agreement executed originally between Prehn and Hodge as the Company's original members:

1. Access to the Company's books and records as defined and set forth in section 3.1, 3.2, and 3.3.
2. Annual reports as defined in section 3.4.
3. The right to have his membership shares represented by "Membership Share Certificates" as set forth in section 5.4.
4. The right to expect any manager of the Company to carry out his duties and exercise his powers with "reasonable skill, care and business judgment."
5. The right to proportionate return of capital pro rata with his relative ownership as set forth in section 7.3.
6. The right to participate in a Company annual meeting as set forth in section 8.1.
7. The right to participate in member loans to the Company in proportion to his "Sharing Ratio" in the Company as set forth in section 9.5. Sharing Ratio is defined in section 18.1 of the Operating Agreement.
8. A quarterly and proportionate share of distributions of "Net Cash from Operations" as such is defined in the Operating Agreement, section 18.1.

9. The right to proportionate share of Company assets in liquidation following dissolution in proportion to his relative positive capital account balances as set forth in section 14.2.

164. Despite requests and demands to the Company, Hodge and Prehn, have failed to fully perform and in some cases, have failed completely to perform as required under the Operating Agreement and Idaho law, specifically:

1. Claiborne was never granted access to Company books and records;

2. Annual reports were not provided annually for the majority of years between 2004 and 2012, and when provided were incomplete and failed to meet the standards required by the Operating Agreement and relevant law;

3. Claiborne was never provided with Membership Share Certificates representing his interest in the Company;

4. Neither Hodge nor Prehn carried out their duties as managers with reasonable skill, care and business judgment. More specifically, both Hodge and Prehn engaged in self-dealing, utilized Company assets for their own gain and benefit at the expense of the Company, Claiborne and the other non-manager members, and failed to disclose critical information and transactions to the non-manager members. Examples of such include but are not limited to the Prehn Loan, Back Salary, Prehn Bonus, paying personal expenses with Company resources and other similar activities. All of the contractual and fiduciary breaches as well as all inappropriate actions taken as set forth herein reduced, damaged and impaired

Claiborne's financial and other rights statutorily, inherently and contractually provided to him as a member of the Company.

5. Claiborne was never provided with a proportionate return of capital pro rata with his relative ownership despite representations by Prehn and Hodge that such would be the case upon investment. The undisclosed Prehn Loan, Prehn Bonus, Back Salary and non-business related expenditures all prevented and/or reduced the amounts available for distribution of Net Cash from Operations. Such transactions were specifically designed and entered into by Prehn and Hodge to reduce Company resources and profits and prevent proper distribution of profits as required by the Operating Agreement.

165. The basis for the Claiborne Share in terms of number of Common Membership Shares and investment amount required were representations by both Hodge and Prehn that the Company had a pre-investment valuation of $2,000,000. Following investment, it became clear that the Company was not worth nearly that much and that both Prehn and Hodge were both aware that their representation of Company value was significantly exaggerated. Further, Prehn and Hodge both represented and assured Claiborne that the return of his investment would be of the highest priority as a means of inducing him to make the Claiborne Contribution.

166. Despite achieving significant profits and possessing sufficient resources to make profits distributions as required under the Operating Agreement, Prehn and Hodge as managers of the Company failed to provide adequate and rightful

quarterly profits distributions to Claiborne. In addition to failure to pay due to unwillingness, such distributions were not made due to improper management by Prehn and Hodge, payment of unreasonable salaries and bonuses, improper and illegal loan arrangements between members, self-benefiting transactions and payment of personal expenses, and other transactions not in the interest of the Company or Claiborne as a member. Claiborne received no distribution of profits until 2011 when Prehn separated from the Company at which time he received approximately $20,000 in distributions.

167. Claiborne was not given proper opportunity to participate proportionately in "member loans" under section 9.5 of the Operating Agreement. The Prehn Loan, which would qualify as a member loan, in effect characterized made Prehn's contributions of cash to the Company preferential to member contributions such as the Claiborne Contribution entitling him to a higher priority to net cash from company's operations prior to any payment of profits distributions to Claiborne. Further, Claiborne should have been given the opportunity to participate proportionately in such member loans and receive the same preferential treatment either for his initial contribution in whole or in part or as further contributions under section 9.5 of the Operating Agreement. These actions were also in contravention of and had the effect of subverting the promises and assurances made to Claiborne upon making the Claiborne Contribution that return of his capital investment would be a priority of the Company and the managers, Prehn and Hodge.

168. Upon being informed that the Company was dissolving and that there may not be sufficient assets to repay the Claiborne Contribution, Claiborne learned that there was to be an auction of the Company assets as allowed under the Operating Agreement. Claiborne was informed by Hodge that it was his intention to successfully, legally and properly bid for the Company's assets and continue the Company's business as Source II. Claiborne had the right to participate in the auction for the Company's assets but did not participate in a material way. Based on conversations between the parties, Claiborne determined individually and independently that his only reasonable opportunity of receiving a return on the Claiborne Contribution was to become a member of Source II. Nothing in this decision was based on a joint plan with Hodge to deprive Prehn of any of his rights under law or the Operating Agreement, rather, it was a decision motivated solely on Claiborne's interest in recovering his investment. Upon further consideration, Claiborne elected to have his spouse be the member of Source II in his place as a means of allowing her to qualify for health insurance under the proposed member benefit plan. Claiborne would not benefit from such plan as he is fully insured as part of the National Football League Player's Association's retired player benefit program.

COUNT I -- INDEMNIFICATION

(CROSS-DEFENDANTS HODGE, SOURCE I, SOURCE II and COUNTER-DEFENDANTS PREHN AND BANDAK)

169. Claiborne restates and adopts the preceding paragraphs 1-168 as though set forth in full verbatim.

170. The Operating Agreement, Section 15 and its subsections, provides that Source I shall indemnify and defend Claiborne against claims including but not limited to those contained against Claiborne in the Complaint.

171. Hodge and Prehn, as managers of Source I, owe a fiduciary duty to Claiborne. In the event that any liability is established against Claiborne for actions of Hodge and/or Prehn in their capacity as manager or member, Hodge and Prehn shall indemnify Claiborne against claims including but not limited to those contained against Claiborne in the Complaint.

172. Source II, as the purported and alleged direct beneficiary and successor in interest of Source I shall indemnify Claiborne against claims including but not limited to those contained against Claiborne in the Complaint.

173. The Complaint alleges that Claiborne is liable to the Plaintiffs as set forth therein.

174. To the extent that any liability is found on the part of Claiborne under the Complaint, Defendants Hodge, Source I, and Source II and Counter-Defendant Prehn are liable to Claiborne for all such liability, and any damages which may be awarded to the Plaintiffs.

COUNT II -- UNJUST ENRICHMENT

(CROSS-DEFENDANTS HODGE, SOURCE I, SOURCE II and COUNTER-DEFENDANTS PREHN AND BANDAK)

175. Claiborne restates and adopts the preceding paragraphs 1-174 as though set forth in full verbatim.

176. Hodge, according to the Operating Agreement and filings with the Idaho Secretary of State, is the manager of the Company. In addition, Prehn has acted

and continued to act as a manager and officer of Source I until Prehn voted to dissolve the Company along with Hodge and the other members of the Company and therefore has accompanying duties to Claiborne consistent with his position and activities with the Company.

177. Cross-Defendants Hodge, Source I, Source II and Counter-Defendant Prehn, by unfair and inequitable means, have obtained, are obtaining and will, unless enjoined, continue to obtain substantial benefits of substantial economic value in the form of Claiborne's contribution of significant cash to Source I, which have benefited the above named parties without proper compensation, profits distribution or other benefit to Claiborne.

178. Given the inequitable and unfair manner in which the above named parties have obtained, are obtaining and will obtain to the detriment of Claiborne, unless enjoined and liability established, the above named parties will continue to be unjustly enriched.

179. It would be inequitable to allow the above named parties to continue to obtain and retain such advantages and benefits in the future.

180. A demand on the above named parties to enforce the foregoing rights and claims of Claiborne or Source I would be futile because neither Prehn nor Hodge are disinterested and independent, nor are the challenged transactions or events the product of either parties' valid exercise of business judgment.

COUNT III -- BREACH OF OPERATING AGREEMENT

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN AND BANDAK)

181. Claiborne restates and adopts the preceding paragraphs 1-180 as though set forth in full verbatim.

182. Hodge and Prehn have breached the Operating Agreement in a variety of ways including without limitation:

1. Both named parties have intentionally engaged in activities and received disproportionate and erroneous distributions and personal financial and other benefits outside of their rights as members or managers of the Company;
2. Such has reduced or eliminated Claiborne's rightful distributions of profits;
3. Hodge and Prehn have failed to continue to operate the Company honestly and faithfully for the benefit of Claiborne and the other members until final distribution.
4. Hodge and Prehn have failed to act with the care toward the Company and Claiborne that a person in their position should reasonably exercise under similar circumstances. Instead, they have taken action to undermine and harm the Company and Claiborne by their activities, erroneous and disproportionate distributions, and activities.
5. As a direct and proximate result of such breaches, the Company and Claiborne have suffered and will suffer monetary damages, the amounts of which will be established at trial.

183. A demand on the above named parties to enforce the foregoing rights and claims of Claiborne or Source I would be futile because neither Prehn nor Hodge are disinterested and independent, nor are the challenged transactions or events the product of either parties' valid exercise of business judgment.

COUNT IV -- BREACH OF FIDUCIARY DUTY

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN AND BANDAK)

184. Claiborne restates and adopts the preceding paragraphs 1-183 as though set forth in full verbatim.

185. Idaho law requires that all named managers and those acting in such capacity in a manager-managed limited liability company owe a fiduciary duty of loyalty to the Company and its members to refrain from dealing with the Company as, or on behalf of, a person having an adverse interest to the Company or Claiborne, engaging in activities or transactions for their own benefit to the detriment of the Company or Claiborne or competing with either of them.

186. Hodge and Prehn, pursuant to Idaho law, owe a fiduciary duty to Source I and Claiborne of loyalty to refrain from competing with the Company in the conduct of its activities.

187. As a direct and proximate result of such breaches, Claiborne and Source I have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

188. A demand on the above named parties to enforce the foregoing rights and claims of Claiborne or Source I would be futile because neither Prehn nor Hodge are disinterested and independent, nor are the challenged transactions or events the product of either parties' valid exercise of business judgment.

COUNT V -- BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN AND BANDAK)

189. Claiborne restates and adopts the preceding paragraphs 1-188 as though set forth in full verbatim.

190. Idaho law requires that all named managers and those acting in such capacity in a manager-managed limited liability company discharge the duties and exercise their rights consistently with the contractual obligation of good faith and fair dealing.

191. There is implied by law in every contract, including the Operating Agreement, a covenant of good faith and fair dealing, which obligated Hodge, Prehn and Bandak to, among other things, deal with Claiborne fairly, honestly, and equitably regarding all matters pertaining to their relationship with the Company and him.

192. In addition, the implied covenant of good faith and fair dealing prohibited Hodge, Prehn and Bandak from violating, nullifying or significantly impairing any of the benefits of the relationship owed to the Company and Claiborne.

193. Hodge, Prehn and Bandak have violated their obligation of good faith and fair dealing as described above.

194. As a direct and proximate result of such breaches, Claiborne and Source I have suffered and will suffer monetary damages, the amounts of which will be proven at trial.

195. A demand on the above named parties to enforce the foregoing rights and claims of Claiborne or Source I would be futile because neither Prehn nor Hodge are

disinterested and independent, nor are the challenged transactions or events the product of either parties' valid exercise of business judgment.

COUNT VI -- PROMISSORY ESTOPPEL (CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN)

196. In obtaining the Claiborne Contribution, managers Prehn and Hodge promised and Claiborne reasonably relied on such promise, that he would receive a return on his investment as the Company accrued profits and net cash from operations.

197. Prehn and Hodge breached such promise by the actions and transactons set forth in the Answer, Counter-claim and Cross-claim, Claiborne has suffered and will suffer monetary damages, in an amount to be proven at trial. Unless restrained and enjoined by this Court, Hodge and Prehn will, by virtue of Claiborne's reliance on their promises and assurances, continue to directly and proximately cause Claiborne great and irreparable harm for which there is no adequate remedy at law.

ATTORNEY FEES

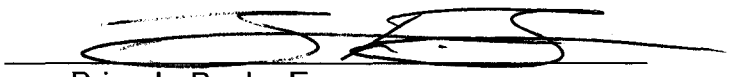
198. The Complaint along with the necessity of filing this Answer, Counterclaim and Crossclaim have required Claiborne to retain counsel to represent his interests. Claiborne is therefore entitled to the recovery of attorney fees and costs pursuant to the terms of the Operating Agreement and/or Idaho Code Sections 12-120(3) and/or 12-121 from all Plaintiffs, Counter-Defendants and Cross-Defendants.

PRAYER FOR RELIEF

Based on the foregoing, the Plaintiffs pray for relief as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice and the Plaintiffs take nothing therefrom
2. That the Court adjudge and decree that Counter-Defendants and Cross-Defendants have engaged in the conduct complained of herein.
3. Award Defendant Claiborne as alleged in the Counterclaim and Crossclaim actual damages, exemplary damages, punitive damages, attorneys' fees, and other remedies as determined by the Court as shall be proven at trial.
4. Enjoin the Counter-Defendants and Cross-Defendants from further action consistent with the facts set forth in this complaint including any further unlawful conduct to the detriment of Claiborne.
5. Award Claiborne costs of suit and attorney fees under the Operating Agreement, Idaho Code Sections 12-120(3), 12-121 and other applicable statute against Plaintiffs Counter-Defendants and Cross-Defendants.
6. Award Claiborne such other and further relief the Court deems just and proper.

DATED this 14th day of August, 2012.



Brian L. Boyle, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Eagle, Idaho; that on August 14, 2012, I caused a true and correct copy of the foregoing to be served upon the following persons at the addresses below their names either by depositing said document in the United States mail with the correct postage thereon, by hand delivery, or by transmitting by facsimile as set forth below.

Michael O. Roe Moffatt, Thomas, Barrett, Rock & Fields, Chtd. PO Box 829 Boise, ID 83701 FAX: (208) 385-5384	[ ] U.S. Mail [X] Hand Delivery [ ] Facsimile [ ] Courthouse Box
Charles C. Crafts 7363 Barrister Boise, ID 83704 FAX: (208) 514-1680	[X] U.S. Mail [ ] Hand Delivery [ ] Facsimile [ ] Courthouse Box
Don Copple Davison, Copple, Copple & Copple P.O. Box 1583 Boise, Idaho 83701 Fax: (208) 386-9428	[X] U.S. Mail [ ] Hand Delivery [ ] Facsimile [ ] Courthouse Box

LAW OFFICE OF BRIAN BOYLE

By: _____
Brian L. Boyle, Esq.

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Attorneys for Defendants/Cross-Defendants
Michael L. Hodge II and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

MICHAEL L. HODGE, II AND THE SOURCE, LLC'S ANSWER TO CHRISTOPHER CLAIBORNE'S COUNTERCLAIMS AGAINST PLAINTIFFS AND CROSS CLAIMS AGAINST CO-DEFENDANTS

CHISTOPHER CLAIBORNE,

Counterclaimant,

vs.

DONNELLY PREHN AND DWIGHT BANKAK

Counterdefendants.

CHRISTOPHER CLAIBORNE,

Crossclaimant,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; AND MICHAEL L. HODGE II,

Cross-defendants.

COME NOW Cross-Defendants, Michael L. Hodge II (hereinafter "Hodge") and The Source, LLC (hereinafter "Source 2"), and hereby submit their answer to the Cross Claim as follows:

1. Hodge and Source 2 deny each and every allegation of the Cross Claim not specifically admitted to herein.

ADDITIONAL AND GENERAL ALLEGATIONS

2. Hodge and Source 2 admit the allegation that Claiborne contributed $175,000 in cash to Source 1in exchange for a membership interest in the company set forth in paragraph 163 of the Cross Claim. The remaining allegations set forth in paragraph 163 of the Cross Claim state legal conclusions to which no response is required. The terms, rights and conditions set forth in the provisions of the Source 1's Operating Agreement speak for itself.

3. Hodge and Source 2 are without sufficient information to admit or deny the general allegations set forth in paragraph 164 and its subparts of the Cross Claim and therefore deny the same.

4. Hodge and Source 2 admit the allegation set forth in paragraph 165 of the Cross Claim that certain representations were made to Claiborne concerning the value of Source 1. The pre-investment valuation of Source 1 was created by Counterclaimant, Donnelly Prehn.

Hodge reasonably relied upon Prehn's representation of the value of Source 1. As to the remainder of the allegations contained in said paragraph, Hodge and Source 2 are without sufficient information to admit or deny and therefore deny the same.

5. Hodge and Source 2 are without sufficient knowledge to admit or deny the allegations set forth in paragraph 166 of the Cross Claim and therefore deny the same.

6. Hodge and Source 2 are without sufficient knowledge to admit or deny the allegations set forth in paragraph 167 of the Cross Claim and therefore deny the same.

7. Hodge and Source 2 admit in paragraph 168 of the Cross Claim that Claiborne was informed of the auction, had a right to participate in the auction and was involved in the auction. As for the remaining allegations set forth therein, Hodge and Source 2 deny.

COUNT I – INDEMNIFICATION

8. In answering paragraph 169, Hodge and Source 2 reallege paragraphs 1 through 7 above as though set forth in full herein.

9. Hodge and Source 2 are without sufficient knowledge to admit or deny the allegations set forth in paragraphs 170 and 171 of the Cross Claim and therefore deny the same.

10. Hodge and Source 2 deny the allegations set forth in paragraphs 172 and 174 of the Cross Claim.

COUNT II – UNJUST ENRICHMENT

11. In answering paragraph 175, Hodge and Source 2 reallege paragraphs 1 through 10 above as though set forth in full herein.

12. Hodge and Source 2 admit the allegations set forth in paragraph 176 of the Cross Claim that Hodge and Prehn were managers and officers at various times throughout the existence of Source I and that all members agreed to dissolve Source 1. As for any remaining

allegations set forth therein, Hodge and Source 2 lack sufficient information to admit or deny and therefore deny the same.

13. Hodge and Source 2 deny the allegations set forth in paragraphs 177, 178, 179 and 180 of the Cross Claim.

COUNT III – BREACH OF OPERATING AGREMENT

14. In answering paragraph 181, Hodge and Source 2 reallege paragraphs 1 through 13 above as though set forth in full herein.

15. Hodge and Source 2 are without sufficient knowledge to admit or deny the allegations set forth in paragraphs 182 and its subparts and 183 of the Cross Claim and therefore deny the same.

COUNT IV – BREACH OF FIDUCIARY DUTY

16. In answering paragraph 184, Hodge and Source 2 reallege paragraphs 1 through 15 above as though set forth in full herein.

17. In answering paragraph 185 of the Cross Claim, the allegation states a legal conclusion to which no response is required.

18. Hodge and Source 2 admit the allegation set forth in paragraph 186 of the Cross Claim.

19. Hodge and Source 2 deny the allegations set forth in paragraphs 187 and 188 of the Cross Claim.

COUNT V – BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

20. In answering paragraph 189, Hodge and Source 2 reallege paragraphs 1 through 19 above as though set forth in full herein.

21. In answering paragraphs 190, 191 and 192 of the Cross Claim, the allegations state legal conclusions to which no response is required.

22. Hodge and Source 2 deny the allegations set forth in paragraphs 193, 194 and 195 of the Cross Claim.

COUNT VI – PROMISSORY ESTOPPEL

23. Hodge and Source 2 deny the allegations set forth in paragraphs 196 and 197 of the Cross Claim. Hodge believed that Claiborne could receive a return on his investment in Source 1, but did not guarantee he would receive a return on his investment.

ATTORNEY FEES

24. Hodge and Source 2 deny the allegation set forth in paragraph 198 of the Cross Claim.

AFFIRMATIVE DEFENSES

25. The Cross Claim fails to state a cause of action against Hodge and Source 2 upon which relief can be granted.

26. Cross-claimant's claims and/or damages, in whole or in part, are barred by the doctrines of waiver, unclean hands and/or laches.

27. Cross-claimant's claims and/or damages, in whole or in part, are barred by the doctrine of accord and satisfaction.

28. Cross-claimant's damages, if any, as a participant in the auction of The Source Store's assets is the result of his own negligence.

29. Cross-claimant's claims and/or damages, in whole or in part, are barred by the doctrine of accord and satisfaction.

30. Cross-claimant's claims and/or damages, in whole or in part, are barred by the assumption of risk doctrine.

31. Cross-claimant's reliance on statements made, if any, was not reasonable or justified.

32. Cross-claimant's claims and/or damages, in whole or in part, are barred for failure to mitigate his damages.

33. Cross-claimant's claims and/or damages, in whole or in part, are barred by the doctrines of promissory, equitable and/or quasi estoppel.

34. The discovery process may reveal other affirmative defenses for which Hodge and Source 2 reserve the right to amend this Answer and pursue said affirmative defenses.

ATTORNEY'S FEES AND COSTS

35. Hodge and Source 2 hereby incorporate by reference paragraphs 1 through 34 above, as though fully set forth herein.

36. Pursuant to Idaho Code §§ 12-120(3), 12-121, Rule 54 of the Idaho Rules of Civil Procedure and/or the Operating Agreement, Hodge and Source 2 are entitled to recover reasonable attorney's fees and costs for the preparation and defense of this action. Hodge and Source 2 have retained the firm Davison, Copple, Copple & Copple to defend this action.

WHEREFORE, the Cross-Defendants, Hodge and Source 2, pray for relief as follows:

1. That Cross-claimant, Christopher Claiborne's Cross Claim be dismissed with prejudice;

2. That Cross-Defendants, Hodge and Source 2 be awarded reasonable attorney fees and costs; and

3. For such other and further relief as the Court may deem just and proper.

DATED this 29th day of August, 2012.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for Michael L. Hodge II and The Source, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of August, 2012, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701 *Attorneys for Plaintiffs*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Charles C. Crafts Crafts Law Inc. 7363 Barrister Boise, Idaho 83704 *Attorney for Defendant George M. Brown*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Judy L. Geier Evans Keane, LLP 1405 W. Main St. P.O. Box 959 Boise, Idaho 83701-0959 *Attorneys for Defendant The Source Store, LLC*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Brian L. Boyle Attorney at Law 903 E. Winding Creek Dr., Ste. 150 Eagle, Idaho 83616 *Attorney for Defendant Christopher Claiborne*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail

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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

THE SOURCE STORE LLC'S ANSWER TO CHRISTOPHER CLAIBORNE'S COUNTERCLAIMS AGAINST PLAINTIFFS AND CROSS CLAIMS AGAINST CO-DEFENDANTS

CHRISTOPHER CLAIBORNE,

Counterclaimant,

vs.

DONNELLY PREHN AND DWIGHT BANDAK,

Counterdefendants.

KS

CHRISTOPHER CLAIBORNE,

Crossclaimant,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Cross-defendants.

Defendant The Source Store, LLC, (hereinafter "Source I"), by and through its counsel of record, Judy L. Geier, of the firm Evans Keane, LLP, submits Source I's Answer to Defendant/Counterclaimant/Crossclaimant Christopher Claiborne's (hereinafter "Claiborne") Counterclaims Against Plaintiffs and Cross Claims Against Co-Defendants. Source I admits, denies and alleges as follows:

1. Source I denies each and every allegation of Claiborne's cross claims against Source I (hereinafter the "Cross Claim") not expressly and specifically admitted herein.

ADDITIONAL AND GENERAL ALLEGATIONS

2. In answering Paragraph 162, Source I realleges Paragraph 1 above as though set forth in full herein.

3. In answering Paragraph 163 and its subparts, Source I admits that Claiborne contributed $175,000 to Source I and received a membership interest in the same subject to the terms of the company's Operating Agreement, as amended. Source I further admits that the Operating Agreement, as amended, speaks for itself.

4. In answering Paragraph 164 and its subparts, Source I is without sufficient information to admit or deny and therefore denies the same.

5. In answering Paragraph 165, Source I admits that certain representations were made

5. In answering Paragraph 165, Source I admits that certain representations were made prior to Claiborne's contribution to Source I regarding the value of Source I. The valuation was determined by Donnelly Prehn and reasonably relied upon by Source I and its members. As to the remainder of the allegations contained in the paragraph, Source I is without sufficient information to admit or deny and therefore denies the same.

6. In answering Paragraphs 166 through167, Source I is without sufficient information to admit or deny the allegations set forth in the paragraphs and therefore denies the same.

7. In answering Paragraph 168, Source I admits that Claiborne had a full and fair opportunity to participate in the members' vote to dissolve the company and to participate in the auction of its assets. As to the remainder of the allegations contained in the paragraph, Source I is without sufficient information to admit or deny and therefore denies the same.

COUNT 1 – INDEMNIFICATION

(CROSS-DEFENDANTS HODGE, SOURCE I, SOURCE II and COUNTER-DEFENDANTS PREHN AND BANDAK)

8. In answering Paragraph 169, Source I realleges Paragraphs 1 through 7 above as though set forth in full herein.

9. In answering Paragraph 170, Source I admits that the Operating Agreement, as amended, speaks for itself. As to the remainder of the allegations contained in the paragraph, Source I is without sufficient information to admit or deny and therefore denies the same.

10. In answering Paragraph 171, Source I admits that managers of the company owe certain fiduciary duties to the company and its members. As to the remainder of the allegations contained in the paragraph, Source I is without sufficient information to admit or deny and therefore denies the same.

11. In answering Paragraph172, Source I is without sufficient information to admit or deny

and therefore denies the same.

12. In answering Paragraph 173, Source I admits that the Complaint speaks for itself.

13. In answering Paragraph 174, Source I denies that Source I is liable to Clairborne. As to the remainder of the allegations contained in the paragraph, Source I is without sufficient information to admit or deny and therefore denies the same.

COUNT II - UNJUST ENRICHMENT

(CROSS-DEFENDANTS HODGE, SOURCE I, SOURCE II and COUNTER-DEFENDANTS PREHN AND BANDAK)

14. In answering Paragraph 175, Source I realleges Paragraphs 1 through 13 above as though set forth in full herein.

15. In answering Paragraph 176, Source I admits that Hodge is the manager of the company; that Prehn was a manager and officer of the company at various times; and that the members voted to dissolve the company. As to the remainder of the allegations contained in the paragraph, Source I is without sufficient information to admit or deny and therefore denies the same.

16. In answering Paragraphs 177 through 180, Source I denies all allegations as they apply to or are directed toward Source I. As to the remainder of the allegations contained in the paragraphs, Source I is without sufficient information to admit or deny and therefore denies the same.

COUNT III - BREACH OF OPERATING AGREEMENT

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN AND BANDAK)

17. In answering Paragraph 181, Source I realleges Paragraphs 1 through 16 above as though set forth in full herein.

18. In answering Paragraph 182, its subparts, and 183, Source I is without sufficient

information to admit or deny the truth of the allegations as they are directed at the other Co-Defendants and, therefore, denies the same.

COUNT IV - BREACH OF FIDUCIARY DUTY

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN AND BANDAK)

19. In answering Paragraph 184, Source I realleges Paragraphs 1 through 18 above as though set forth in full herein.

20. In answering Paragraph 185 through 188, the paragraphs state legal conclusions to which no response is required. To the extent that the paragraphs contain factual allegations, those factual allegations are directed at the other Co-Defendants. Source I is without sufficient information to admit or deny the factual allegations directed at the other Co-Defendants and, therefore, denies the same.

COUNT V - BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN AND BANDAK)

21. In answering Paragraph 189, Source I realleges Paragraphs 1 through 22 above as though set forth in full herein.

22. In answering Paragraphs 190 through 195, the paragraphs state legal conclusions to which no response is required. To the extent that the paragraphs contain factual allegations, those factual allegations are directed at the other Co-Defendants. Source I is without sufficient information to admit or deny the factual allegations directed at the other Co-Defendants and, therefore, denies the same.

COUNT VI - PROMISSORY ESTOPPEL

(CROSS-DEFENDANT HODGE and COUNTER-DEFENDANTS PREHN)

23. Source I realleges Paragraphs 1 through 22 above as though set forth in full herein.

24. In answering Paragraphs 196 and 197, the paragraphs contain factual allegations that are directed at the other Co-Defendants. Source I is without sufficient information to admit or deny the factual allegations and, therefore, denies the same.

ATTORNEY FEES

25. In answering Paragraph 198, Source I denies the same.

AFFIRMATIVE DEFENSES

Source I submits the following as defenses to Claiborne's claims:

26. Cross –claimant fails to state a cause of action against Source I upon which relief can be granted.

27. Cross-claimant's claims are barred by the doctrines of waiver, of unclean hands and of laches.

28. Cross-claimant's reliance on statements made, if any, was not reasonable or justified.

29. Cross-claimant's claims are barred by the parole evidence rule.

30. Cross-claimant's claims and/or damages, in whole or in part, are barred by the doctrine of accord and satisfaction.

31. Cross-claimant's damages, if any, as a participant in Source I or in the auction of Source I's assets is the result of his own negligence.

32. Cross-claimant's claims and/or damages, in whole or in part, are barred by the assumption of risk doctrine.

33. Cross-claimant's claims and/or damages, in whole or in part, are barred for failure to

mitigate his damages.

34. Cross-claimant's claims and/or damages, in whole or in part, are barred by the doctrines of promissory, equitable and/or quasi estoppel.

35. The discovery process may reveal other affirmative defenses for which Source I reserves the right to amend this Answer and pursue said affirmative defenses.

REQUEST FOR ATTORNEYS FEES

36. Source I incorporates by reference Paragraphs 1 through 35 above as though fully set forth herein.

37. Source I has been required to hire an attorney to defend against Claiborne's cross-claims. Pursuant to Idaho Code §§ 12-120-121; IRCP 54 and the parties' Operating Agreement, Source I is entitled to recover its attorney fees and costs incurred in defending against Claiborne's cross-claims.

WHEREFORE, having answered, Source I, prays for relief as follows:

1. That Claiborne's cross-claims against Source I be dismissed with prejudice;

2. That Source I be awarded reasonable attorney fees and costs; and

3. That the Court grant such further relief as it deems just and proper.

DATED this 29th day of August, 2012.

EVANS KEANE LLP

By Judy L. Geier
Judy L. Geier, Of the Firm
Attorneys for The Source Store, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2012, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Michael O. Roe MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 101 S. Capitol Blvd., 10th Fl P.O. Box 829 Boise, ID 83701 *Attorneys for Plaintiffs*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Edward J. Guerricabeitia DAVISON COPPLE COPPLE & COPPLE, LLC P.O. Box 1583 Boise, ID 83701-1583 *Attorneys for Defendant Michael L. Hodge II and The Source, LLC*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Charles C. Crafts CRAFTS LAW INC. 7363 Barrister Boise, ID 83704 *Attorney for Defendant George M. Brown*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Brian L. Boyle 903 E. Winding Creek Dr., Ste. 150 Eagle, ID 83616 *Attorney for Defendant Christopher Claiborne*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery

Judy L. Geier

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Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

REPLY TO COUNTERCLAIM OF CHRISTOPHER CLAIBORNE

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

COME NOW Plaintiffs Donnelly Prehn ("Prehn") and Dwight Bandak ("Bandak"), by and through their counsel, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., and without admitting any liability or damages, and without assuming the burden of proof as to any issue in this litigation, reply to the Answer to Second Amended Complaint, Counterclaim and Crossclaim ("Counterclaim") filed by Defendant Christopher Claiborne ("Claiborne") as follows:

FIRST DEFENSE

Claiborne's Counterclaim fails to state a claim upon which relief can be granted and should therefore be dismissed pursuant to Idaho Rule of Civil Procedure 12(b)(6).

SECOND DEFENSE

Prehn and Bandak deny each and every allegation of Claiborne's Counterclaim that is not specifically and expressly admitted herein.

THIRD DEFENSE

In answer to the specific allegations of Claiborne's Counterclaim, Prehn and Bandak admit, deny and allege as follows:

1. In response only to the affirmative assertions, statements and allegations set forth in Paragraph 8 of Claiborne's Counterclaim, Prehn and Bandak admit only that

Claiborne obtained a 9.8% membership interest in Source 1 by contributing $175,000. Prehn and Bandak are without sufficient information or knowledge to admit or deny the remaining allegations, and therefore deny the same.

2. In response only to the affirmative assertions, statements and allegations set forth in Paragraph 32 of Claiborne's Counterclaim, Prehn and Bandak deny the same.

3. In response only to the affirmative assertions, statements and allegations set forth in Paragraphs 13, 15, 17, 29, 34, 44, 51, 63, 68, 77, 85, 98, 105, 115, 121, 127, 133, 139, 145 and 151 of Claiborne's Counterclaim, Prehn and Bandak are without sufficient information or knowledge to admit, and therefore deny the same.

4. In response to Paragraph 162 of Claiborne's Counterclaim, Prehn and Bandak aver that they are not required to reply to Claiborne's answers or affirmative defenses in their reply to Claiborne's Counterclaim, and therefore, Prehn and Bandak neither admit nor deny the same.

5. In response to Paragraph 163 of Claiborne's Counterclaim, Prehn and Bandak are without sufficient information or knowledge to admit or deny the allegations, and therefore deny the same.

6. In response to Paragraph 164 of Claiborne's Counterclaim, Prehn and Bandak deny, with the following exceptions: Prehn and Bandak admit that Michael Hodge ("Hodge") did not carry out his duty as manager with reasonable skill, care and business judgment and that Hodge engaged in self-dealing. Prehn avers that the Prehn Loan and Prehn Back Salary were disclosed to Claiborne on numerous occasions. Prehn further avers that he insisted and ensured that any "personal expenses" or "perks" that he received reduced the balance of the Prehn Loan. Finally, upon information and belief, Prehn avers that he is aware of

one instance in which Claiborne requested and may have been denied access to Source 1 books and records by Hodge. Claiborne requested to review Hodge's expense reports, and when Prehn approached Hodge about responding to such request, Hodge indicated his intent to address the request with Claiborne, and indicated that Prehn should no longer have any contact with Claiborne.

7. In response to Paragraph 165 of Claiborne's Counterclaim, Prehn and Bandak deny, with the following exception: Prehn and Bandak are without sufficient information or knowledge to admit or deny whether Hodge made any representations or provided any assurances related to the priority of the return of Claiborne's investment. Prehn also specifically avers that, at the time of Claiborne's investment, virtually all communications between Claiborne and Source 1 were between Hodge and Claiborne.

8. In response to Paragraph 166 of Claiborne's Counterclaim, Prehn and Bandak are without sufficient information or knowledge to admit or deny whether Source 1 made a quarterly profits distribution to Claiborne before 2011, and therefore deny the same. Prehn and Bandak admit Hodge received an unreasonable salary starting in 2011, which salary Prehn repeatedly advised Claiborne and other members was too high. Prehn and Bandak otherwise deny the allegations in Paragraph 166.

9. In response to Paragraph 167 of Claiborne's Counterclaim, Prehn and Bandak admit only that member loans are governed in accordance with the Operating Agreement, which speaks for itself, and otherwise deny the allegations in Paragraph 167. Prehn and Bandak further aver that Claiborne purchased an equitable interest in Source 1, and is not a creditor entitled to preferred status upon dissolution. Finally, Prehn avers that, upon information and belief, Hodge approached Claiborne numerous times seeking additional investment or

participation in member loans, and Claiborne repeatedly declined to take any further risks associated with Source 1.

10. In response to Paragraph 168 of Claiborne's Counterclaim, Prehn and Bandak admit only that Claiborne had the right to participate in the auction for Source 1's assets. Prehn and Bandak are without sufficient information or knowledge to admit or deny the remaining allegations, and therefore deny the same.

11. Paragraph 169 of Claiborne's Counterclaim realleges allegations contained in prior paragraphs and does not require a responsive pleading by Prehn and Bandak.

12. In response to Paragraph 170 of Claiborne's Counterclaim, Prehn and Bandak admit only that the Operating Agreement speaks for itself, and otherwise deny.

13. In response to Paragraph 171 of Claiborne's Counterclaim, Prehn and Bandak admit that Hodge is the manager of Source 1 and owes a fiduciary duty to Claiborne and all members of Source 1, and otherwise deny.

14. In response to Paragraph 172 of Claiborne's Counterclaim, Prehn and Bandak are without sufficient information or knowledge to admit or deny the allegations, and therefore deny the same.

15. In response to Paragraph 173 of Claiborne's Counterclaim, Prehn and Bandak admit.

16. In response to Paragraph 174 of Claiborne's Counterclaim, Prehn and Bandak deny.

17. Paragraph 175 of Claiborne's Counterclaim realleges allegations contained in prior paragraphs and does not require a responsive pleading by Prehn or Bandak.

18. In response to Paragraph 176 of Claiborne's Counterclaim, Prehn admits only that Hodge is the manager of Source 1, and otherwise denies. The allegations are not directed to Bandak, and as such no responsive pleading from him is required.

19. In response to Paragraph 177-180 of Claiborne's Counterclaim, Prehn denies the allegations as to Prehn. Prehn is without sufficient information or knowledge to admit or deny the allegations related to Hodge, Source 1, and Source 2, and therefore denies the same. The allegations are not directed to Bandak, and as such no responsive pleading from him is required.

20. Paragraph 181 of Claiborne's Counterclaim realleges allegations contained in prior paragraphs and does not require a responsive pleading by Prehn or Bandak.

21. In response to Paragraph 182 of Claiborne's Counterclaim, Prehn admits only that Hodge has breached the Operating Agreement in a variety of ways, resulting in damage to Source 1 and its members. Prehn denies the remainder of the allegations. The allegations are not directed to Bandak, and as such no responsive pleading from him is required.

22. In response to Paragraph 183 of the Claiborne's Counterclaim, Prehn admits only that a demand upon Hodge would be futile. Prehn avers that Hodge is the manager of Source 1, to whom a member's claim against Source 1 must be made, and that Prehn is not the manager of Source 1. Therefore, Prehn denies the remainder of the allegations. The allegations are not directed to Bandak, and as such no responsive pleading from him is required.

23. Paragraph 184 of Claiborne's Counterclaim realleges allegations contained in prior paragraphs and does not require a responsive pleading by Prehn or Bandak.

24. Paragraph 185 of Claiborne's Counterclaim states a pure legal conclusion to which no response is required. To the extent a response is required, Prehn denies. The allegations are not directed to Bandak, and as such no responsive pleading from him is required.

25. In response to Paragraphs 186 through 188 of Claiborne's Counterclaim, Prehn admits only that Hodge owes a fiduciary duty of loyalty to Source 1 and all Source 1 members, that Hodge breached such duty, that Source 1 has suffered and will suffer monetary damages as a result of Hodge's breach, and that a demand upon Hodge would be futile. Prehn avers that Hodge is the manager of Source 1, to whom a member's claim against Source 1 must be made, and that Prehn is not the manager of Source 1. Therefore, Prehn denies the remainder of the allegations. The allegations are not directed to Bandak, and as such no responsive pleading from him is required.

26. Paragraph 189 of Claiborne's Counterclaim realleges allegations contained in prior paragraphs and does not require a responsive pleading by Prehn and Bandak.

27. Paragraphs 190 through 192 of Claiborne's Counterclaim state pure legal conclusions to which no response is required. To the extent a response is required, Prehn and Bandak deny the same.

28. In response to Paragraphs 193 through 195 of Claiborne's Counterclaim, Prehn and Bandak deny.

29. In response to Paragraphs 196 through 197 of Claiborne's Counterclaim, Prehn denies as to the alleged status and representations of Prehn, as well as any breach of a promise by Prehn. Prehn is without sufficient knowledge or information to admit or deny the remaining allegations, and therefore denies the same.

30. In response to Paragraph 198 of Claiborne's Counterclaim, Prehn and Bandak deny.

FOURTH DEFENSE

Neither Prehn nor Bandak are the manager of Source 1, a manager-managed limited liability company, and neither Prehn nor Bandak have assumed the rights, duties and obligations of the manager of Source 1.

FIFTH DEFENSE

Claiborne's claims are barred, either in whole or in part, by the equitable doctrines of waiver, estoppel, and laches.

SIXTH DEFENSE

Claiborne's claims are barred, either in whole or in part, by the doctrine of unclean hands.

SEVENTH DEFENSE

Claiborne's claims are barred, either in whole or in part, by the applicable statute of limitations.

EIGHTH DEFENSE

Claiborne's claims are barred or reduced in that neither Prehn nor Bandak owed a duty to Claiborne in regard to the alleged misconduct attributable to Prehn and Bandak.

NINTH DEFENSE

Claiborne's damages, if any, were directly and proximately caused by his own negligent conduct.

TENTH DEFENSE

Claiborne's claims are barred or reduced by the doctrine of accord and satisfaction.

ELEVENTH DEFENSE

Claiborne's claims are barred or reduced by the doctrine of set-off.

TWELFTH DEFENSE

Claiborne's claims are barred or reduced by his failure to mitigate damages.

THIRTEENTH DEFENSE

Claiborne's claims are barred because he assumed the risk of loss

Prehn and Bandak, by virtue of pleading a "defense" above, do not admit that any such defense is "an affirmative defense" within the meaning of applicable law, and do not thereby assume a burden of proof or a protection not otherwise imposed upon them as a matter of law. In addition, in asserting any of the above defenses, Prehn and Bandak do not admit any fault, responsibility, liability, or damage but, to the contrary, expressly deny the same.

DISCOVERY

Discovery is not yet concluded, the results of which may disclose the existence of facts supporting further and additional defenses. Prehn and Bandak therefore reserve the right to seek leave of this Court to amend their Reply to Counterclaim as they deem appropriate.

COSTS AND ATTORNEY FEES

Prehn and Bandak have been required to retain legal counsel and incur costs and attorneys' fees in order to defend the allegations set forth in Claiborne's Counterclaim. Prehn and Bandak are entitled to the recovery of their costs and attorney fees pursuant to the terms of the Operating Agreement and/or Idaho Code Sections 12-120(3) and/or 12-121.

WHEREFORE, Prehn and Bandak pray for judgment against Claiborne on his Counterclaim as follows:

1. That Claiborne take nothing by his Counterclaim and that his claims be dismissed with prejudice;

2. That Claiborne be required to reimburse Prehn and Bandak for reasonable costs and attorneys' fees incurred in the defense of this matter; and

3. For such other and further relief as the Court deems just and proper.

DATED this 4 day of September, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4 day of September, 2012, I caused a true and correct copy of the foregoing **REPLY TO COUNTERCLAIM OF CHRISTOPHER CLAIBORNE** to be served by the method indicated below, and addressed to the following:

Judy L. Geier
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Michael O. Roe

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Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

COME NOW Plaintiffs/Counterdefendants Donnelly Prehn and Dwight Bandak (the "Plaintiffs"), by and through their counsel of record MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, and pursuant to Rules 33, 34 and 37 of the Idaho Rules of Civil Procedure, hereby move the Court for an order compelling Defendant/Crossdefendant The Source, LLC ("Source 2") to fully and completely respond to Plaintiffs' first set of discovery requests to Source 2. This Motion is supported by a Memorandum in Support and the Affidavit of Matthew J. McGee filed contemporaneously herewith.

Oral argument is requested on the Motion.

DATED this 21st day of September, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2012, I caused a true and correct copy of the foregoing **MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

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Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

AFFIDAVIT OF MATTHEW J. MCGEE IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

STATE OF IDAHO)
) ss.
County of Ada)

MATTHEW J. MCGEE, having been duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys of record for Plaintiffs/Counterdefendants Donnelly Prehn and Dwight Bandak (the "Plaintiffs") in this matter, have access to my clients' files, and make this affidavit based upon my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' First Set of Interrogatories and Requests for Production to The Source, LLC (the "Discovery Requests"), dated July 27, 2012.

3. Attached hereto as Exhibit B is a true and correct copy of Defendant, The Source LLC's Answers and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production to The Source, LLC, dated September 7, 2012.

4. The Source LLC ("Source 2") failed to sufficiently respond to Interrogatory Nos. 6, 7, and 8 and Request for Production Nos. 8-15, contained within the Discovery Requests.

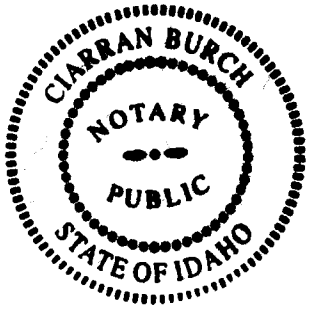
5. Attached hereto as Exhibit C is a true and correct copy of my meet and confer letter to counsel for Source 2, dated September 13, 2012.

6. Source 2 has neither responded to the September 13th meet and confer letter, nor has it supplemented responses to the Discovery Requests by appropriately answering Interrogatory Nos. 6, 7, and 8, or producing additional documents for inspection.

Further your affiant sayeth naught.

Matthew J. McGee

SUBSCRIBED AND SWORN to before me this 21st day of September, 2012.



NOTARY PUBLIC FOR IDAHO
Residing at Boise, ID
My Commission Expires 4/9/13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2012, I caused a true and correct copy of the foregoing **AFFIDAVIT OF MATTHEW J. MCGEE IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

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Matthew J. McGee

EXHIBIT A

TO

Affidavit of Matthew J. McGee in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests

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Matthew J. McGee, ISB No. 7979
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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO THE SOURCE, LLC**

TO: DEFENDANT THE SOURCE, LLC

PLEASE TAKE NOTICE that Donnelly Prehn and Dwight Bandak (hereinafter the "Plaintiffs"), by and through their counsel of record MOFFATT, THOMAS BARRETT, ROCK &

FIELDS, CHTD., and requests The Source, LLC to respond to Plaintiffs' First Set of Interrogatories and Requests for Production as follows:

1. Pursuant to Rule 33 of the Idaho Rules of Civil Procedure, you must fully and fairly answer all of the questions in this set of interrogatories, under oath, within thirty (30) days from service hereof.

2. Pursuant to Rule 34 of the Idaho Rules of Civil Procedure, you must fully and fairly comply with each request for production of documents by producing the same for inspection and/or copying at the offices of MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED, 101 S. Capitol Boulevard, 10th Floor, Boise, Idaho 83702, within thirty (30) days from service hereof.

INSTRUCTIONS

1. In responding to these discovery requests, you are requested to furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, consultants, expert witnesses, and any other person or persons acting on your behalf, and not merely such information as is known to you by your own personal knowledge.

2. In responding to these discovery requests, you must make a diligent search of your records and all other papers and materials that are in your possession or available to you, or to the persons described in the preceding paragraph. If any item has subparts, answer each part separately and in full. If you cannot answer any of the following requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

3. If you object to any request on the ground that the information sought is privileged and non-discoverable, please state the basis for your claim of privilege and, in the case of any request for production, identify the documents and records which you object to producing, in sufficient detail as to enable the court to rule upon claim of privilege.

4. These discovery requests are deemed to be continuing. If, after responding to these requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Rule of Civil Procedure 26(e), to file and serve supplemental answers or responses containing such further information.

5. If you fail to respond to one or more of these discovery requests or if your response to one or more of these requests is evasive or incomplete, the may move the Court for an order compelling you to fully respond to these requests and to pay the reasonable expenses, including attorney fees, incurred by it in obtaining the order.

6. If you fail to produce the documents and records requested herein on the ground that the necessary information, documents and records are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, documents and records.

7. If you fail to respond to any of these requests in full or fail to supplement your answers or responses as requested, Plaintiffs may move the Court for an order precluding you from introducing into evidence, or otherwise using either at trial or on motion for summary judgment, any testimony, witness, exhibit, documents, records, publication, or other item or information not timely disclosed in your responses to these discovery requests.

DEFINITIONS

1. The terms "**you**" and "**your**" shall mean The Source, LLC and its agents, representatives, consultants, investigators, attorneys and all other persons or entities acting or purporting to act for or on behalf of The Source, LLC, whether authorized to do so or not, and all other persons who are in possession of or may have obtained information on behalf of The Source, LLC, as the context dictates.

2. The term "**person**" means any natural person, corporation, limited liability company, partnership, firm, trust, incorporated or unincorporated association, or any other legal entity or agent or servant thereof.

3. The term "**document**" means all written, electronic, recorded, or graphic material, however produced or reproduced, or stored on paper, cards, tapes, belts, computer devices, or any other medium in your possession, custody, or control, or known by you to exist and includes, without limitation, e-mails, checks, records, reports, papers, writing, books, letters, brochures, notes, memoranda, correspondence, agreements, contracts, receipts, invoices, work order forms, purchase order forms, shipping documents, journals, bids, ledgers, summaries, minutes of meetings, telephone messages, telephone notes, photographs, interoffice communications, telegrams, schedules, diaries, logs, telexes, audio or video tapes, transcripts, recordings, pictures or films, computer printouts, programs, graphics, symbols, drawings and approvals, maps, notations, additions, or markings of any kind or nature.

4. The term "**communication**" shall mean any dissemination of information or transmission of a statement from one person to another, or in the presence of another, whether written, electronic, oral, or by action or conduct.

5. The term "**fact**" shall include, without limitation, every matter, occurrence, act, event, transaction, occasion, instance, circumstance, representation, or other happening, by whatever name it is known.

6. The terms "**know**" or "**knowledge**" include within their meaning first-hand knowledge, or information derived from any other source, including, but not limited to, hearsay knowledge.

7. The terms "**concern**" or "**concerning**" mean relating to, referring to, describing, evidencing or constituting.

8. The terms "**and**" and "**and/or**" and "**or**" shall each be deemed to refer to both their conjunctive and disjunctive meanings, being construed as necessary to bring within the scope of the request all information and documents which would otherwise be construed as being outside the request.

9. The term "**any**" shall mean "each and every" and "all" as well as "any one," and "**all**" shall mean "any and all."

10. The term "**contact**" shall mean any and all forms of communication including without limitation physical meetings, video conferences, telephone conversations, facsimile transmissions, e-mail, written correspondence, and communication through agents or other third parties.

11. The terms "**identify**," "**identifying**," "**identity**," or "**identified**," when referencing a person, shall call for the full name, residence, business and home address, present employer, title and relationship, business or otherwise, between such person and the person answering the interrogatory. When referring to documents, "to identify" means to give, to the

extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

12. The term "**Litigation**" shall mean and refer to the above-captioned matter.

13. The term "**The Source Store, LLC**" shall mean and refer to The Source Store, LLC, the limited liability company duly organized in the State of Idaho on June 21, 2002, under entity/file number W19708.

14. The term the "**The Source, LLC**" shall mean and refer to The Source, LLC, the limited liability company duly organized in the State of Idaho on April 16, 2012, under entity/file number W113013.

15. The term the "**purchase order**" shall mean an order from a customer requesting to purchase a product or service that The Source, LLC markets and sells, or marketed and sold at one time.

INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, occupation, address and telephone number of each and every person who has, or purports to have, knowledge of any facts or issues relating to the subject matter of this Litigation, and identify the facts and issues of which you believe they have knowledge.

INTERROGATORY NO. 2: Please state the name, address, and phone number of each and every person you intend to call as a lay witness at the trial of this Litigation, and the substance of their expected testimony.

INTERROGATORY NO. 3: Please state the name of each and every person you expect to call as an expert witness at the trial of this Litigation, and for each such person state, with particularity, all information allowed for inquiry by Rule 26(b)(4) of the Idaho Rules of

Civil Procedure and Rule 705 of the Idaho Rules of Evidence, including, without limitation, their address and telephone number, the qualifications upon which you intend to rely to establish said person as an expert witness, the subject matter on which said person is expected to testify, and the substance of the facts and opinions to which he or she is expected to testify.

INTERROGATORY NO. 4: Please identify, by title, date and subject matter, each exhibit which you plan to offer into evidence at trial of this Litigation and describe the proposed use and relevance of each such exhibit.

INTERROGATORY NO. 5: Are you or your attorney or other agents aware of any written, oral or nonverbal statement or assertion, signed or unsigned, concerning the events giving rise to this Litigation or its subject matter, that has been made by any person who has or might have personal knowledge of the facts of this Litigation? If so, please separately state the following information for each such statement: (a) the date, time of day and place of the making of the statement; (b) the subject matter and content of the statement; and (c) the identity of the person or persons, if any, who wrote, recorded and/or transcribed the statement.

INTERROGATORY NO. 6: Please state the date on which The Source, LLC commenced operations, both nationally and internationally, and describe all of the activities, contracts, and transactions of The Source, LLC that constituted the commencement of operations, including but not limited to, marketing activities, sales activities and employee recruitment.

INTERROGATORY NO. 7: Please identify all persons who have been or are currently employed by The Source, LLC, and/or who act or have acted as an independent contractor on behalf of The Source, LLC, and state each identified person's position and date of

hire, as well as the compensation that has been paid to each identified employee per month, for the time period between February 2012 and the present date..

INTERROGATORY NO. 8: Please identify all customers and potential customers with whom The Source, LLC has communicated regarding its provision of products and/or services, and describe the date and nature of any such communications.

INTERROGATORY NO. 9: Please identify all customers and potential customers for whom The Source, LLC has agreed to provide products and/or services, including without limitation, those customers who have made purchase orders.

INTERROGATORY NO. 10: Please identify any purchase orders received by The Source, LLC, and describe the date of receipt, the products ordered, the price, and the quantity ordered.

INTERROGATORY NO. 11: Please identify all of The Source, LLC's bank accounts, lines of credit, and/or business loans.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce copies of any and all documents you relied upon and/or identified in your answers to each of the above-stated Interrogatories.

REQUEST FOR PRODUCTION NO. 2: Please produce copies of all documents and exhibits that you expect to offer as evidence at the trial of this matter.

REQUEST FOR PRODUCTION NO. 3: Please produce a current curriculum vitae for any expert whom you have disclosed in your answers to the Interrogatories herein.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of any report prepared by any expert whom you have disclosed in your answers to the Interrogatories herein,

including drafts of any report, as well as all notes, documents, journals, record of conversations, working files and writings prepared by the expert which relate in any way to his or her opinions in this case, any writings and other documents reviewed by the expert in connection with formulating his/her opinions concerning this case, and writings or other documents of any kind which the expert relied upon in formulating his/her opinions in this case.

REQUEST FOR PRODUCTION NO. 5: Please produce the complete file maintained for this case by each expert whom you have disclosed in your answers to the Interrogatories herein, including all documents or other materials provided to the expert by you or any third party, any written communications, including e-mails, between you and the expert or the expert and any third party, and any notes or memoranda.

REQUEST FOR PRODUCTION NO. 6: Please produce copies of any and all documents, including, without limitation, correspondence, memoranda, files, notes, e-mails, agreements, contracts, notes of conversations, telephone messages, journals, diaries, summaries, or other written material prepared by or possessed by you, pertaining to the claims which form the subject of this Litigation.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of each and every document containing any statement, whether written or oral (i.e., cassette, micro-cassette, videotape, etc.), made by any person relating to, referencing, or evidencing the claims which form the subject of this Litigation.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of any and all financial records of The Source, LLC, including, without limitation, financial statements, balance sheets, income statements, profit and loss statements, statements of cash flows, sources and use

of funds, tax returns, quarterly reports, annual reports, business plans, projects, assumptions, strategic plans, valuations, and account ledgers.

REQUEST FOR PRODUCTION NO. 9: Please produce copies of any and all financial records and other business documents relating in any way to the operations of The Source, LLC, including, without limitation, canceled checks or other evidence of payments or receipts of payments, monthly bank statements, deposits (including source), promissory notes, security agreements, mortgages or deeds of trust, UCC financing statements, and payroll expenses.

REQUEST FOR PRODUCTION NO. 10: Please produce complete copies of monthly income statements for The Source, LLC, including any drafts, addenda, details, reports, calculations or other documents.

REQUEST FOR PRODUCTION NO. 11: Please produce complete copies of monthly balance sheets for The Source, LLC, including any related addenda, details, reports or other documents.

REQUEST FOR PRODUCTION NO. 12: Please produce all documents that detail, describe, or account for any The Source, LLC payroll expenditures.

REQUEST FOR PRODUCTION NO. 13: Please produce all expense reports for managers, officers, and employees of The Source, LLC, including all monthly credit card statements.

REQUEST FOR PRODUCTION NO. 14: Please produce a copy of The Source, LLC's monthly bank statements.

REQUEST FOR PRODUCTION NO. 15: Please produce a copy of any report(s) that track, account for, or otherwise document purchase orders received by The Source, LLC, whether such orders are open or have been filled, refused, reversed, closed, or cancelled.

REQUEST FOR PRODUCTION NO. 16: Please produce a copy of any lease agreement for the physical offices of the Source, LLC in Boise, Idaho, as well as canceled checks or other evidence of payments made to the lessor.

REQUEST FOR PRODUCTION NO. 17: Please produce copies of all documents concerning The Source, LLC's purchase of machinery, equipment or any other tools used in the course of The Source, LLC's business operations.

REQUEST FOR PRODUCTION NO. 18: Please produce copies of any and all documents evidencing any contact or communications between The Source Store, LLC, its employees, agents, representatives, consultants and any other persons or entities acting or purporting to act for or on its behalf, and The Source, LLC, its employees, agents, representatives, consultants and any other persons or entities acting or purporting to act for or on its behalf, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 19: Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other person concerning dissolution and/or liquidation of The Source Store, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 20: Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other person concerning the formation and/or operation of The Source, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 21: Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other person concerning The Source, LLC's willingness or ability to receive and process purchase orders originally received by The Source Store, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 22: Please produce copies of any and all documents evidencing any contact or communications between Michael Hodge and George Brown, Christopher Claiborne or any employee or officer of The Source, LLC concerning Donnelly Prehn and/or Dwight Bandak, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 23: Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC and Technology Plastics, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 24: Please produce copies of all The Source, LLC internal emails (emails between and/or among employees and officers of The Source, LLC).

REQUEST FOR PRODUCTION NO. 25: Please produce copies of all emails between any employee or officer of The Source, LLC and any customer of The Source Store, LLC.

REQUEST FOR PRODUCTION NO. 26: Please produce copies of any and all documents evidencing any communications between Michael Hodge and George Brown concerning dissolution and/or liquidation of The Source Store, LLC and/or formation and/or operation of The Source, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 27: Please produce copies of any and all documents evidencing any communications between Michael Hodge and Christopher Claiborne concerning dissolution and/or liquidation of The Source Store, LLC and/or formation and/or operation of The Source, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 28: Please produce copies of any and all documents evidencing any communications between Christopher Claiborne and George Brown concerning dissolution and/or liquidation of The Source Store, LLC and/or formation and/or operation of The Source, LLC, including, without limitation, correspondence, e-mails,

memoranda, notes of conversations, telephone messages, and any other communication of any kind.

REQUEST FOR PRODUCTION NO. 29: Please produce copies of any of your tax filings, both state and federal.

REQUEST FOR PRODUCTION NO. 30: Please produce copies of any and all documents evidencing any communications between you and any accountant, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind, pertaining to or relating in any way to the commencement of operation of The Source, LLC.

REQUEST FOR PRODUCTION NO. 31: To the extent not produced in response to the requests for production, please produce all electronically stored information in your possession, custody, or control that is responsive to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to The Source Store, LLC, pursuant to Idaho Rule of Civil Procedure 34(a), including but not limited to, information stored on any desktop computer, laptop computer, Netbook computer, iPad or other tablet computer, Blackberry or other smart phone, hard drive, external storage media, local area network, wide area network, handheld device, personal digital assistant, mobile phone, server, and/or archive/backup system. Plaintiffs request that The Source Store, LLC produce any responsive electronically stored information in the format of single-page TIFF images, with accompanying OCR text and native files, and associated metadata, by way of a vendor-prepared Summation load file. Alternatively, Plaintiffs will work with directly The Source Store's vendor of choice to develop and prepare the production of electronically stored information in Plaintiffs' preferred format.

DATED this 27th day of July, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 2012, I caused a true and correct copy of the foregoing **PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO THE SOURCE, LLC** to be served by the method indicated below, and addressed to the following:

Judy Geier
EVANS KEANE LLP
P.O. Box 959
Boise, ID 83701-0959
Facsimile (208) 345-3514
Attorneys for Defendant The Source Store, LLC

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorney for Defendant Michael L. Hodge II and The Source, LLC

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Brian L. Boyle
ATTORNEY AT LAW
903 E. Winding Creek Dr., Suite 150
Eagle, ID 83616
Facsimile (208) 361-8185
Attorney for Defendant Christopher Claiborne

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Charles Crawford Crafts
CRAFTS LAW INC.
7363 Barrister
Boise, ID 83704
Facsimile (208) 514-1680
Attorney for Defendant George M. Brown

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Matthew J. McGee

EXHIBIT B

TO

Affidavit of Matthew J. McGee in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests

E DON COPPLE (ISB No. 1085)
ED GUERRICABEITIA (ISB No. 6148)
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Attorneys for Defendants
The Source, LLC, Michael Hodge II, George Brown & Christopher Claiborne

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **DEFENDANT, THE SOURCE LLC'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO THE SOURCE, LLC**

TO: THE ABOVE-NAMED PLAINTIFFS, AND THEIR ATTORNEYS, MICHAEL O. ROE AND MATTHEW J. McGEE.

COMES NOW the Defendant, The Source LLC ("Source 2"), by and through its attorneys, Davison, Copple, Copple & Copple, and pursuant to Rules 33 and 34 of the Idaho Rules for Civil Procedure, hereby answers and responds to Plaintiffs' First Set of Interrogatories

ORIGINAL

and Request for Production of Documents.

Further, pursuant to Rule 33(a)(3) of the Idaho Rules of Civil Procedure, Defendant answers the first forty (40) Interrogatories (including sub-parts) propounded by the Plaintiffs. Defendant objects to all Interrogatories in excess of forty (40), and by answering all or any part in excess of the forty (40) Interrogatories allowed by Rule 33(a)(3) of the Idaho Rules of Civil Procedure, Defendant shall not be deemed to have waived this objection, which shall be continuing.

INTERROGATORIES

INTERROGATORY NO. 1. Please sate the name, occupation, address of and telephone number of each and every person who has, or purports to have, knowledge of any facts or issues relating to the subject matter of this Litigation, and identify the facts and issues of which you believe they have knowledge.

ANSWER TO INTERROGATORY NO. 1: Source 2 has not yet fully discovered the names, addresses and telephone numbers of each and every person who has or purports to have knowledge of any facts or issues relating to the subject matter of this Litigation and therefore reserves the right to supplement this answer in accordance with the Idaho Rules of Civil Procedure and the Court's Scheduling Order. Notwithstanding, Source identifies the following persons who may have knowledge of the facts and issues in this Litigation:

1) Michael L. Hodge, II, c/o Davison & Copple, P.O. Box 1583, Boise, ID 83701, (208) 342-3658. Mr. Hodge has knowledge of Source 1 and Source 2's formation, members, bookkeeping, business, customer base, products, productions, assets and liquidation.

2) George M. Brown, c/o Crafts Law Inc., 7363 Barrister, Boise, ID 83704, (208) 367-1749. Mr. Brown has knowledge of Source 1 and Source 2's formation, members, bookkeeping, business, customer base, products, productions, assets and liquidation.

3) Christopher Claiborne, c/o Brian L. Boyle Esq., 903 E. Winding Creek Dr., Ste. 150, Eagle, ID 83616, (208) 419-3619. Mr. Claiborne has knowledge of Source 1 and Source 2's formation, members, bookkeeping, business, customer base, products, productions, assets and liquidation.

4) Donnelly Prehn, c/o Moffatt & Thomas, P.O. Box 829, Boise, ID 83701, (208) 345-2000. Mr. Prehn has knowledge of Source 1's formation, members, bookkeeping, business, customer base, products, productions, assets and liquidation.

5) Dwight Bandak, c/o Moffatt & Thomas, P.O. Box 829, Boise, ID 83701, (208) 345-2000. Mr. Bandak has knowledge of Source 1's formation, members, bookkeeping, business, customer base, products, productions, assets and liquidation.

6) Blair Bews, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Mr. Bews has knowledge of Source 1's overseas customer relations and business.

7) Cammas Freeman, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520;

8) Susan Cook, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Ms. Cook has knowledge of Source 1's customer accounts.

9) Adrian Zavala, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Mr. Zavala has knowledge of Source 1's customer accounts.

10) Jesse Arp, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Mr. Arp has knowledge of Source 1 and Source 2's bookkeeping and accounts.

11) Kristina Puett, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Ms. Puett has knowledge of Source 1's art department.

12) Barbara Brant, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520;

13) Michael Chan, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Mr. chan managed Source 1's Asian office.

14) Hellen Zhang, The Source, LLC, 3637 N. Lake Harbor Lane, Boise, ID 83703, (208) 368-0520. Ms. Zhang was an office assistant in Source 1'2 Asian office.

15) Tom Fernandes, Technology Plastics, 230 Ella Grasso Ave., Torrington, CT 06790, (860) 496-0459 ext. 13. Mr. Fernandes has knowledge of Source 1's production and design of the plastic molds;

16) Neal Stuart, Richter, Stuart & Todeschi, 1161 W. River St #260, Boise, ID 83702, (208) 336-7162. Mr. Stuart has knowledge of Source 1 and Source 2's tax preparation, accounting, member capital accounts, etc.;

17) Kelly Shaw, Bristol Group, 950 Bannock Street, Ste 1100, Boise, Idaho 83702, (208) 319-3800, has knowledge of the value of Source 1;

18) Steve Brooke, Body Building.com, (208) 377-3326. Mr. Brooke has knowledge of Source 1's production and communications between plaintiffs and defendants with Body Building.com; and

19) Lyle Cook, Vice President, Syringa Bank, 3127 E. State St., Eagle, Idaho 83616, (208) 947-9379. Mr. Cook has knowledge of Source 1's bank account with Syringa Bank.

INTERROGATORY NO. 2. Please state the name, address, and phone number of each and every person you intend to call as a lay witness at the trial of this Litigation, and the substance

of their expected testimony.

ANSWER TO INTERROGATORY NO. 2: Source 2 has not yet identified each and every person it intends to call as a lay witness at the trial of this Litigation and therefore reserves the right to supplement this answer in accordance with the Idaho Rules of Civil Procedure and the Court's Scheduling Order. Notwithstanding, Source 2 anticipates and reserves the right to call each and every person identified to his Answer to Interrogatory 1 set forth above.

INTERROGATORY NO. 3. Please state the name of each and every person you expect to call as an expert witness at the trial of this Litigation, and for each such person state, with particularity, all information allowed for inquiry by Rule 26(b)(4) of the Idaho Rules of Civil Procedure and Rule 705 of the Idaho Rules of Evidence, including, without limitation, their address, telephone number, the qualifications upon which you intend to rely to establish said person as an expert witness, the subject matter on which said person is expected to testify, and the substance of the facts and opinions to which he or she is expected to testify.

ANSWER TO INTERROGATORY NO. 3: Source 2 has not yet identified each and every expert witness it intends to call at the trial of this Litigation and therefore reserves the right to supplement this answer in accordance with the Idaho Rules of Civil Procedure and the Court's Scheduling Order.

INTERROGATORY NO. 4. Please identify, by title, date and subject matter, each exhibit which you plan to offer into evidence at trial of the Litigation and describe the proposed use and relevance of each such exhibit.

ANSWER TO INTERROGATORY NO. 4: Source 2 has not yet identified each exhibit it plans to offer into evidence at the trial of this Litigation and therefore reserves the right to supplement this answer in accordance with the Idaho Rules of Civil Procedure and the Court's

Scheduling Order. Notwithstanding, Source 2 anticipates and reserves the right to introduce each and every document produced in its responses to Plaintiff's First Set of Requests for Production, as well as those documents prepared, created and saved on The Source Store, LLC's server.

INTERROGATORY NO. 5. Are you or your attorney or other agents aware of any written, oral or nonverbal statement or assertion, signed or unsigned, concerning the events giving rise to this Litigation or its subject matter, that has been made by any person who has or might have personal knowledge of the facts of this Litigation? If so, please separately state the following information for each such statement: (a) the date, time of day and place of the making of the statement; (b) the subject matter and content of the statement; and (c) the identity of the person or persons, if any, who wrote, recorded and/or transcribed the statement.

ANSWER TO INTERROGATORY NO. 5: Source 2 objects to this Interrogatory on the grounds that it is vague, unduly burdensome, and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Further, Source 2 objects to the extent that the interrogatory seeks information that is protected by attorney client privilege and the work product doctrine. Subject to and without waiving these objections, please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

INTERROGATORY NO. 6: Please state the date on which The Source, LLC commenced operations, both nationally and internationally, and describe all of the activities, contracts, and transactions of The Source, LLC that constituted the commencement operations, including but limited to, marketing activities, sales activities and employee recruitment.

ANSWER TO INTERROGATORY NO. 6: Source 2 objects to this Interrogatory on the grounds that is vague, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without

waiving these objections, on or about April 16, 2012, The Source 2 filed its Certificate of Organization with the Idaho Secretary of State. Thereafter, Source 2 opened up a checking account with Syringa Bank. After the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 commenced taking and processing orders with customers. In addition, please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

INTERROGATORY NO. 7: Please identify all persons who have been or are currently employed by The Source, LLC, and/or who act or have acted as an independent contractor on behalf of The Source, LLC, and state each identified person's position and date of hire, as well as the compensation that has been paid to each identified employee per month, for the time period between February 2012 and the present date.

ANSWER TO INTERROGATORY NO. 7: Source 2 objects to this Interrogatory on the grounds that is vague, unduly burdensome, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, the following persons are currently employed by The Source, LLC: Mike Hodge; Mike Brown; Blair Bews; Cammas Freeman; Susan Cook; Adrian Zavala; Jesse Arp; Kristina Puett; Barbara Brant; Michael Chan and Hellen Zhang. Further, Source 2 refers Plaintiffs to the responses and documents submitted by Source 1 and Hodge to Plaintiffs First Set of Interrogatories and Requests for Production of Documents and the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

INTERROGATORY NO. 8: Please identify all customers and potential customers with whom The Source, LLC has communicated regarding its provision of products and/or services, and describe the date and nature of such communications.

ANSWER TO INTERROGATORY NO. 8: Source 2 objects to this Interrogatory on the grounds that is vague, unduly burdensome, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

INTERROGAOTRY NO. 9: Please identify all customers and potential customers for whom The Source, LLC has agreed to provide products and/or services, including without limitation, those customers who have made purchase orders.

ANSWER TO INTERROGATORY NO. 9: Source 2 objects to this Interrogatory on the grounds that is vague, unduly burdensome, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28. Source 2 also refers Plaintiffs to Defendants, Source 1 and Michael Hodge's responses to Plaintiff's First of Interrogatories and Requests for Production.

INTERROGATORY NO. 10: Please identify any purchase orders received by The Source, LLC, and describe the date of receipt, the products ordered, the price, and the quantity ordered.

ANSWER TO INTERROGATORY NO. 10: Source 2 objects to this Interrogatory on the grounds that is vague, unduly burdensome, seeks confidential business plans and strategies of The

Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers.

INTERROGATORY NO. 11. Please identify all of The Source, LLC's bank accounts, lines of credit, and/or business loans.

ANSWER TO INTERROGATORY NO. 11: Source 2 objects to this Interrogatory on the grounds that is vague, unduly burdensome, seeks confidential business plans, strategies and information of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Source 2 has a bank account at Syringa Bank. In addition, please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1. Please produce copies of any and all documents relied upon and/or identified in your answers to each of the above-stated interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: Please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-__28.

REQUEST FOR PRODUCTION NO. 2. Please produce copies of all documents and exhibits that you expect to offer as evidence at the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Source 2 has not yet identified each exhibit it expects to offer into evidence at the trial of this Litigation and therefore reserves the right to supplement this answer in accordance with the Idaho Rules of Civil Procedure and the

Court's Scheduling Order. Notwithstanding, Source 2 refers to the documents produced in these discovery responses.

REQUEST FOR PRODUCTION NO. 3. Please produce a current curriculum vitae for any expert whom you have disclosed in your answers to the Interrogatories herein.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Source 2 refers Plaintiffs to its response to Interrogatory No. 3. Source 2 reserves the right to supplement this response in accordance with the Idaho Rules of Civil Procedure and the Court's Scheduling Order.

REQUEST FOR PRODUCTION NO. 4. Please produce a cop of any report prepared by any expert whom you have disclosed in your answers to the Interrogatories herein, including drafts of any report, as well as all notes, documents, journals, records of conversations, working files and writings prepared by the expert which relate in any way to his or her opinions in this case, any writings and other documents reviewed by the expert in connection with formulating his/her opinions concerning this case, and writings or other documents of any kind which the expert relied upon in formulating his/her opinions in this case.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Source 2 refers Plaintiffs to its response to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 5. Please produce the complete file maintained for this case by each expert whom you have disclosed in your answers to the Interrogatories herein, including all documents or other materials provided to the expert by you or any third party, any written communications, including e-mails, between you and the expert or the expert and any third party, and any notes or memoranda.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Source 2 refers Plaintiffs to its response to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 6. Please produce copies of any and all documents, including, without limitation, correspondence, memoranda, files, notes, e-mails, agreements, contracts, notes of conversations, telephone messages, journals, diaries, summaries, or other written material prepared by or possessed by you, pertaining to the claims which form the subject of this Litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Further, Source 2 objects to the extent that the request seeks information that is protected by attorney client privilege and the work product doctrine. Subject to and without waiving these objections, please see the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 7. Please produce copies of each and every document containing any statement, whether written or oral (i.e., cassette, micro-cassette, videotape, etc.), made by any person relating to, referencing, or evidencing the claims which form the subject of this Litigation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Further, Source 2 objects to the extent that the request seeks information that is protected by attorney client privilege and the work product doctrine. Subject to and without waiving these objections, Source 2 refers Plaintiffs to the responses and documents submitted by Source 1 and Hodge to Plaintiffs First Set of Interrogatories

and Requests for Production of Documents and the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 8. Please produce copies of any and all financial records of The Source, LLC, including, without limitation, financial statements, balance sheets, income statements, profit and loss statements, statements of cash flow, sources and use of funds, tax returns, quarterly reports, annual reports, business plans, projects, assumptions, strategic plans, valuations, and account ledgers.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 9. Please produce copies of any and all financial records and other business documents relating in any way to the operations of The Source LLC, including, without limitation, canceled checks and other evidence of payments or receipts of payments, monthly bank statements, deposits (including source), promissory notes, security agreements, mortgages or deeds of trust, UCC financing statements, and payroll expenses.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably

calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 10. Please produce complete copies of monthly income statements for The Source, LLC, including any drafts, addenda, details, reports, calculations or other documents.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-.

REQUEST FOR PRODUCTION NO. 11. Please produce complete copies of monthly balance sheets for The Source, LLC, including related addenda, details, reports, or other documents.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the

non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 12. Please produce all documents that detail, describe, or account for any The Source, LLC payroll expenditures.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 13. Please produce all expense reports for managers, officers, and employees of The Source, LLC, including all monthly credit card statements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing

orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 14. Please produce a copy of The Source, LLC's monthly bank statements.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 15. Please produce a copy of any report(s) that track, account for, or otherwise document purchase orders received by The Source, LLC, whether such orders are open or have been filled, refused, reversed, closed, or cancelled.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 16. Please produce a copy of any lease agreements for the physical offices of the Source, LLC in Boise, Idaho, as well as canceled checks or other evidence of payments made to the lessor.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Source 2 does not have any lease agreements for its physical office.

REQUEST FOR PRODUCTION NO. 17. Please produce copies of all documents concerning The Source, LLC's purchase of machinery, equipment or any other tools used in the course of The Source, LLC's business operations.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, all members of Source 1 participated in an auction, including Plaintiffs, and now members of Source 2 acquired Source 1's assets through said auction. Source 2 refers to the bill of sales produced in Michael Hodge's Answers and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production to Michael Hodge.

REQUEST FOR PRODUCTION NO. 18. Please produce copies of any and all documents evidencing any contact or communications between The Source Store, LLC, its employees, agents, representatives, consultants and any other persons or entities action of purporting to act for or on its behalf, and The Source, LLC, its employees, agents, representatives,

consultants and any other persons or entities acting or purporting to act for or on its behalf, including, without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. Michael Hodge is the President and member of Source 2 and a Defendant in this lawsuit.

REQUEST FOR PRODUCTION NO. 19. Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other persons concerning dissolution and/or liquidation of The Source Store, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server

and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. Michael Hodge is the President and member of Source 2 and a Defendant in this lawsuit.

REQUEST FOR PRODUCTION NO. 20. Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other person concerning the formation and/or operation of The Source, LLC, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 21. Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other persons concerning The Source, LLC's willingness or ability to receive and process purchase orders originally received by

The Source Store, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 22: Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, including, but not limited to, employees Michael Hodge and George Brown, and any other persons concerning dissolution and/or liquidation of The Source Store, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these

objections, Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense.

REQUEST FOR PRODUCTION NO. 23: Please produce copies of any and all documents evidencing any contact or communications between The Source, LLC, and Technology Plastics, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced taking and processing orders with customers. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 24: Please produce copies of all The Source, LLC internal emails (emails between and/or among employees and officers of The Source, LLC).

RESPONSE TO REQUEST FOR PRODUCTION NO. 24: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably

calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced operations in competition with Plaintiffs. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 25: Please produce copies of all emails between any employee or officer of The Source, LLC and any customer of The Source Store, LLC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced operations of the company. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 26: Please produce copies of any and all documents evidencing any contact or communications between Michael Hodge and George Brown concerning dissolution and/or liquidation of The Source Store, LLC and/or formation and/or operation of The Source, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably

calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced operations of the company. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 27: Please produce copies of any and all documents evidencing any contact or communications between Michael Hodge and Christopher Claiborne concerning dissolution and/or liquidation of The Source Store, LLC and/or formation and/or operation of The Source, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced operations of the company. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. In addition,

Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 28: Please produce copies of any and all documents evidencing any contact or communications between Christopher Claiborne and George Brown concerning dissolution and/or liquidation of The Source Store, LLC and/or formation and/or operation of The Source, LLC, including without limitation, correspondence, e-mails, memoranda, notes of the conversations, telephone messages, and any other communication of any kind.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Furthermore, Source 2 objects to the extent that the subject request is directed to the wrong party as both Christopher Claiborne and George Brown are parties to this lawsuit and better able to response to this request. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced operations of the company. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense which may contain the information sought in this request. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 29: Please produce copies of any of your tax filings, both state and federal.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, Source 2 commenced operations this year and has not filed any taxes, either state or federal.

REQUEST FOR PRODUCTION NO. 30: Please produce copies of any and all documents evidencing any communications between you and any accountant, including, without limitation, correspondence, e-mails, memoranda, notes of conversations, telephone messages, and any other communication of any kind, pertaining to or relating in any way to the commencement of operation of The Source, LLC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Further, Source 2 objects to the extent that the information sought is protected by the client-accountant privilege. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-competé agreement on May 18, 2012, Source 2 thereafter commenced operations of the company. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense. In addition, Source 2 refers Plaintiffs to the enclosed CD of documents Bates Numbered as SOURCE 2-1 through SOURCE 2-28.

REQUEST FOR PRODUCTION NO. 31: To the extent not produce in reposes to the requests for production, please produce all electronically stored information in your possession, custody, or control that is responsive to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to The Source Store, LLC, pursuant to Idaho Rule of Civil Procedure 34(a), including but not limited to , information stored on any desktop computer, laptop computer, Netbook computer, iPad or other tablet computer, Blackberry or other smart phone, hard drive, external storage media, local area network, wide area network, handheld device, personal digital assistant, mobile phone, server, and/or archive/backup system. Plaintiffs request that The Source Store, LLC produce any responsive electronically stored information in the format of single-page TIFF images, with accompanying OCR text and native files, and associated metadata, by waif of a vendor-prepared Summation load file. Alternatively, Plaintiffs will work with directly The Source Store's vendor of choice to develop and prepare the production of electronically stored information in Plaintiffs' preferred format.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31: Source 2 objects to this request on the grounds that it is overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, after the parties stipulated to and the Court issued the Order releasing Hodge from the non-compete agreement on May 18, 2012, Source 2 thereafter commenced operations of the company. Source 2 refers to Michael Hodge's answers and responses to Plaintiffs' discovery request where Hodge will make available for Plaintiffs' inspection and copying of Source 1's server and hard files upon Plaintiffs' request for appointment and at Plaintiffs' expense.

DATED this 7th day of September, 2012.

DAVISON, COPPLE, COPPLE & COPPLE

By: _____
Ed Guerricabeitia, of the firm
Attorneys for The Source, LLC & Hodge

VERIFICATION

STATE OF IDAHO)
:ss
County of Ada)

THE SOURCE, LLC, by its member and President, being first duly sworn on oath, deposes and says that he has authority to verify The Source, LLC's Answers and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production; that he has read the above and foregoing responses and that he believes the responses therein stated to be true and correct to the best of his knowledge and ability.

THE SOURCE, LLC

By: M. Hodge II
Michael L. Hodge II
Its: President and Member

SUBSCRIBED AND SWORN to and before me this 7th day of September, 2012.

Sharyn Hastings
NOTARY PUBLIC for IDAHO
Residing at: Meridian
My commission expires: 06-28-2016

SHARYN HASTINGS
Notary Public
State of Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of September, 2012, a true and correct copy of the foregoing was served upon the following by the method indicated below:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701 *Attorneys for Plaintiffs*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Charles C. Crafts Crafts Law Inc. 7363 Barrister Boise, Idaho 83704 *Attorney for Defendant George M. Brown*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Judy L. Geier Evans Keane, LLP 1405 W. Main St. P.O. Box 959 Boise, Idaho 83701-0959 *Attorneys for Defendant The Source Store, LLC*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Brian L. Boyle Attorney at Law 903 E. Winding Creek Dr., Ste. 150 Eagle, Idaho 83616 *Attorney for Defendant Christopher Claiborne*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail

Ed Guerricabeitia

E DON COPPLE (ISB No. 1085)
ED GUERRICABEITIA (ISB No. 6148)
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Attorneys for Defendants
The Source, LLC & Michael Hodge II

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **NOTICE OF SERVICE**

NOTICE IS HEREBY GIVEN that on the 7th day of September, 2012, a true and correct original and copies of Defendant, The Source, LLC's Answers and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to The Source, LLC, together with a copy of this Notice, were served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701 *Attorneys for Plaintiffs*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Charles C. Crafts Crafts Law Inc. 7363 Barrister Boise, Idaho 83704 *Attorney for Defendant George M. Brown*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Judy L. Geier Evans Keane, LLP 1405 W. Main St. P.O. Box 959 Boise, Idaho 83701-0959 *Attorneys for Defendant The Source Store, LLC*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Brian L. Boyle Attorney at Law 903 E. Winding Creek Dr., Ste. 150 Eagle, Idaho 83616 *Attorney for Defendant Christopher Claiborne*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail

DATED this 7th day of September, 2012.

DAVISON, COPPLE, COPPLE & COPPLE

By: Ed Guerricabeitia

Ed Guerricabeitia, of the firm
Attorneys for Michael L. Hodge, II and The Source, LLC

EXHIBIT C

TO

Affidavit of Matthew J. McGee in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise
Idaho Falls
Pocatello

Richard C. Fields
John S. Simko
John C. Ward
D. James Manning
David B. Lincoln
Gary T. Dance
Larry C. Hunter
Randall A. Peterman
Mark S. Prusynski
Stephen R. Thomas
Glenna M. Christensen
Gerald T. Husch
Scott L. Campbell
Robert B. Burns
Michael E. Thomas
Patricia M. Olsson

Christine E. Nicholas
Bradley J Williams
Lee Radford
Michael O. Roe
David S. Jensen
James L. Martin
C. Clayton Gill
Michael W. McGreaham
David P. Gardner
Julian E. Gabiola
Kimberly D. Evans Ross
Jon A. Stenquist
Mark C. Peterson
Tyler J. Anderson
Andrew J. Waldera
Dylan B. Lawrence

C. Edward Cather III
Benjamin C. Ritchie
Noah G. Hillen
Matthew J. McGee
Mindy M. Willman
Andrea J. Rosholt
Jetta Hatch Mathews

Robert E. Bakes, *of counsel*
Norman M. Semanko, *of counsel*

Willis C. Moffatt, 1907-1980
Eugene C. Thomas, 1931-2010
John W. Barrett, 1931-2011
Kirk R. Helvie, 1956-2003

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September 13, 2012
via E-mail
and U.S. Mail

Edward J. Guerricabeitia
Davison Copple Copple & Copple, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583

Re: Prehn, et al. v. The Source Store, LLC, et al.
Ada County Case No. CV OC 1207728
MTBR&F File No. 24853.0000

Dear Ed:

This office is in receipt of The Source, LLC's ("Source 2") Answers and Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to the Source, LLC. Without waiving any objection or argument by Plaintiffs related to such answers and responses, we wish to call your attention to the following matters, of immediate importance.

First, Source 2's response to Interrogatory No. 6 is non-responsive. The interrogatory requests a description of "all of the activities, contracts, and transactions of The Source, LLC that constituted the commencement of operations, including but not limited to, marketing activities, sales activities and employment recruitment." Source 2's response describes only the date on which Source 2 commenced taking and processing orders with customers.

Second, Source 2's response to Interrogatory No. 7 is incomplete and/or non-responsive. It fails to identify each named person's date of hire and compensation paid by Source 2 since February 2012.

Third, Source 2's response to Interrogatory No. 8 is incomplete and/or non-responsive. The interrogatory requests identification of all customers with whom Source 2 communicated about its products and services, and a description of the date and nature of such communications. Source 2's response describes only the date on which Source 2 commenced taking and processing orders with customers, and refers generally to 28 attached documents.

Source 2's objections to the foregoing interrogatories are without merit, and regardless of said objections, my clients are entitled to an answer. At present, the referenced answers amount to

unwarranted gamesmanship, each entirely failing to address the substance of the request. We are confident that a Court will determine that the requested information is relevant to Plaintiffs' claims, under the broad scope of discovery articulated in Rule 26(b)(1), Idaho Rules of Civil Procedure. Please submit amended answers on or before September 20, 2012.

Fourth, despite reference to a mere 28 attached documents in each of the responses to Requests for Production Nos. 8 through 13, none of the produced documents are responsive. Other than bank account statements dated April 30, 2012 and May 31, 2012, and certain Monthly Booked Orders Reports, which are both incomplete productions, Source 2's submitted documentation related to Requests for Production 8 through 15 do not include any financial information at all.

Objections as to the breadth, burden and relevance of the requests are baseless. As you know, among other matters, at issue in this case is the depletion of Source 1 assets and financial resources for the sole and exclusive benefit of Source 2 and its members. Indeed, in accordance with the Court's order, dated May 17, 2012, "the overhead and expenses of Source 1 [were to] be reduced to the absolute minimum necessary to complete the Dissolution . . . in order to maximize the return and final distribution of funds to all Source 1 members" and "[n]o party [was to] divert, employ or otherwise use any Source 1 asset, including without limitation the Assets or Source 1 employees, to or for the benefit of Source 2 or any other person or entity." The Plaintiffs are entitled to discover what, if any, Source 1 assets have been exhausted or liabilities incurred, in whole or in part, for the benefit of Source 2 and its members. The financial information requested in Requests for Production 8 through 15, including Source 2's payroll expenditures, financial statements, balance sheets, expense reports, receipts, bank statements for dates June to present, and other accounting information and documents, are certainly relevant to that and other critical issues in this case.

Please provide all documents responsive to Requests for Production 8 through 15 on or before September 20, 2012. If your client fails to respond, the Plaintiffs will be forced to file a motion to compel and seek all additional relief afforded under the Idaho Rules of Civil Procedure. This letter intends to satisfy my clients' meet and confer obligations.

On a related matter, in an e-mail dated August 29, 2012, your office indicated that there are three remaining orders to be delivered and collected by Source 1 to complete dissolution. Please provide this office an estimated date upon which those actions will be complete.

We thank you in advance for your cooperation.

Very truly yours,

Matthew J. McGee

MJM/kmd
cc: Donnelly L. Prehn
Dwight Bandak

Michael O. Roe, ISB No. 4490
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
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24853.0000

Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

COME NOW Plaintiffs/Counterdefendants Donnelly Prehn and Dwight Bandak (the "Plaintiffs"), by and through its undersigned counsel of record, pursuant to Rules 33, 34 and 37 of the Idaho Rules of Civil Procedure, and hereby submit this Memorandum in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests.

I. BACKGROUND

On or about July 27, 2012, Plaintiffs served on Defendant/Crossdefendant The Source, LLC ("Source 2"), Plaintiffs' First Set of Interrogatories and Requests for Production to The Source, LLC (the "Discovery Requests"). *See*, Exhibit A to the Affidavit of Matthew J. McGee ("McGee Aff.") filed contemporaneously herewith; *see also*, Notice of Service, filed with the Court on July 27, 2012. Contained within the Discovery Requests were eleven (11) interrogatories and thirty-one (31) requests for production of documents.

A. Interrogatories.

On or about September 7, 2012, Source 2 served its answers to the interrogatories contained within the Discovery Requests. *See*, Exhibit B to the McGee Aff. However, Source 2 failed to sufficiently respond to Interrogatory Nos. 6, 7, and 8, as follows:

1. Interrogatory No. 6 seeks a description of "all of the activities, contracts, and transactions of The Source, LLC that constituted the commencement of operations, including

but not limited to, marketing activities, sales activities and employment recruitment." Source 2 objected on the grounds that the interrogatory was "vague, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence." Notwithstanding its objections, Source 2 responded by describing only the date on which Source 2 commenced taking and processing orders with customers.

2. Interrogatory No. 7 seeks the identification of all current and past employees and independent contractors of Source 2, as well as the position, date of hire, and compensation paid to such employees and independent contractors, from February 2012 to present. Source 2 objected on the grounds that the interrogatory was "vague, unduly burdensome, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence." Notwithstanding its objections, Source 2 responded by identifying "current" employees and their positions and otherwise referred Plaintiffs to the discovery responses of other parties to this action.

3. Finally, Interrogatory No. 8 requests identification of all customers with whom Source 2 communicated about its products and services, and a description of the date and nature of such communications. Source 2 objected on the grounds that the interrogatory was "vague, unduly burdensome, seeks confidential business plans and strategies of The Source, LLC and not reasonably calculated to lead to the discovery of admissible evidence." Notwithstanding its objections, Source 2 responded by describing only the date on which Source 2 commenced taking and processing orders with customers, and refers generally to 28 pages of documents comprising Source 2's document production (SOURCE 2-1 to SOURCE 2-28).

B. Requests for Production of Documents.

Included within the Discovery Requests were thirty-one (31) requests for production of documents. On or about September 7, 2012, Source 2 served its answers to the requests for production contained within the Discovery Requests and provided a total of twenty-eight (28) pages of documents. *See*, Exhibit B to the McGee Aff. The Plaintiffs largely take issue with Source 2's responses to Request for Production Nos. 8-15, which requests seek documents and records relating mainly to the operations and finances of Source 2. In response to these requests, Source 2 asserted an identical series of objections: "overly broad, unduly burdensome, seeks confidential business plans, strategies and information of Source 2 and seeks information that is not relevant, nor reasonably calculated to lead to the discovery of admissible evidence." Notwithstanding these objections, Source 2 provided 28 pages of documents.

C. Meet and Confer Letter.

On September 13, 2012, counsel for Plaintiffs sent a letter to counsel for Source 2 requesting that it supplement its answers to the above-described interrogatories and requests for production of documents. *See*, Exhibit C to the McGee Aff. Source 2 has neither responded to the September 13 meet and confer letter nor has it supplemented its incomplete and evasive responses to the Discovery Requests. *See* McGee Aff., ¶ 6.

II. ARGUMENT

A. The Information Sought in the Discovery Requests is Appropriate Under Rule 26(b) of the Idaho Rules of Civil Procedure.

The Court should compel Source 2 to supplement its discovery responses to fully and completely answer the interrogatories and requests for production outlined above. Rule 26(b) of the Idaho Rules of Civil Procedure states, in pertinent part:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . .

I.R.C.P. 26(b)(1). Rule 26 "has been interpreted consistently to allow the broadest possible discovery." *Caldero v. Tribune Pub. Co.*, 98 Idaho 288, 306, 562 P.2d 791, 809 (1977). In *Caldero*, the Idaho Supreme Court held that the scope of discovery permitted under Rule 26 is so broad that, "at the discovery stage a party may in fact engage in a fishing expedition." *Id.*, citing 8 WRIGHT & MILLER, FEDERAL PRAC. & PROC., § 2008; *see also Hickman v. Taylor*, 329 U.S. 495, 507 (1947) ("No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case.").

At issue in this case, among other things, is the depletion of the assets and financial resources of The Source Store, LLC ("Source 1") for the sole and exclusive benefit of Source 2 and its members. Indeed, in accordance with this Court's order, dated May 17, 2012, "the overhead and expenses of Source 1 [were to] be reduced to the absolute minimum necessary to complete the Dissolution . . . in order to maximize the return and final distribution of funds to all Source 1 members" and "[n]o party [was to] divert, employ or otherwise use any Source 1 asset, including without limitation the Assets or Source 1 employees, to or for the benefit of Source 2 or any other person or entity." The Plaintiffs are entitled to discover what, if any, Source 1 assets have been exhausted or liabilities incurred, in whole or in part, for the benefit of Source 2 and its members. The financial information requested in Requests for Production 8 through 15, including Source 2's payroll expenditures, financial statements, balance sheets, expense reports, receipts, bank statements for dates June to present, and other accounting information and documents, are certainly relevant to that and other critical issues in this case.

Source 2's responses to the Discovery Requests do not comport with the intent of the Discovery Requests. It is fundamentally unfair to expect the Plaintiffs to pursue their claims and adequately defend themselves from the counterclaims brought against them when little or no information is provided by Source 2 based upon a litany of meritless objections.

The burden of showing that information is exempt from discovery is on the party attempting to withhold the requested information. See *Kirk v. Ford Motor Co.*, 141 Idaho 697, 704, 116 P.3d 27, 34 (2005). As demonstrated above, Source 2 cannot meet this burden. Therefore, the Plaintiffs respectfully request this Court to issue an Order compelling Source 2 to immediately and fully respond to the outstanding Discovery Requests.

B. An Order Compelling Source 2 to Fully and Completely Respond to the Discovery Requests is Appropriate Under Rule 37 of the Idaho Rules of Civil Procedure.

Idaho Rule of Civil Procedure 37(a)(2) provides that a motion to compel may be brought to compel a party to respond to discovery requests propounded pursuant to Rule 33 and Rule 34. IDAHO R. CIV. P. 37(a)(2). Whether to grant a motion to compel is within the sound discretion of the court. *See Merrifield v. Arave*, 128 Idaho 306 (Ct. App. 1996). As noted above, the Discovery Requests of the Plaintiffs are well within the broad scope of discovery permitted under Rule 26 of the Idaho Rules of Civil Procedure. Source 2's answers to Interrogatory Nos. 6, 7, and 8 are incomplete and/or non-responsive. In the mere 28 pages of documents produced by Source 2 in response to the *thirty-one* requests for production, it provided no correspondence, no financial statements, no balance sheets, no bank statements, no tax returns, no expense reports or data, no evidence of the purchase or leasing of any equipment or facilities, and no documentation concerning the dissolution or liquidation of Source 1.

Source 2's failure to address the substance of the interrogatories and requests for production and its assertion of multiple, baseless objections answer and responses to the Discovery Requests, amount to unwarranted gamesmanship. Accordingly, the Plaintiffs respectfully request this Court to issue an Order compelling Source 2 to immediately and fully respond to the outstanding Discovery Requests.

C. The Plaintiffs Have Made Reasonable Efforts To Resolve The Discovery Dispute.

Counsel for the Plaintiffs has attempted to resolve these discovery disputes without the assistance of this Court, via written correspondence to Source 2's counsel on September 13, 2012. *See* Exhibit C to the McGee Aff. Source 2 failed not only to respond to the September 13th meet and confer letter, but have also failed to supplement its discovery responses in any manner. *See* McGee Aff., ¶ 6.

D. Rule 37 of the Idaho Rules of Civil Procedure Authorize an Award of Attorney Fees and Costs Incurred by Defendants in Bringing this Motion to Compel.

Finally, pursuant to Idaho Rule of Civil Procedure 37(a), the Plaintiffs seek an Order awarding costs and fees to them in connection with bringing this Motion, supporting memorandum and affidavit before the Court, as well as any hearing thereon. *See* I.R.C.P. 37(a)(4) ("If the motion is granted, the court ***shall***, after opportunity for hearing, require the party . . . whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, . . .") (emphasis added). An award of the expenses incurred by the Plaintiffs in bringing this Motion is proper under the circumstances presented here because Source 2 can offer no substantial justification for its failures to wholly and completely respond to

the Discovery Requests. Counsel for the Plaintiffs has attempted to informally elicit complete discovery responses from Source 2, to no avail.

III. CONCLUSION

The broad scope of discovery permitted by the courts encourages parties to delve into all aspects of the matter being litigated in order to provide the court with the truest picture of the circumstances surrounding their dispute. One party can not thwart the discovery process on grounds of untimeliness, records releases, claimed inconvenience or irrelevance without first providing a clear showing that the requested discovery seeks information so far removed from the subject matter of the litigation as to make it impossible to relate such information back to the issues before the court. That is not the case here. Therefore, for the above-mentioned reasons, Plaintiffs respectfully request that this Court grant its Motion to Compel and issue an order compelling Source 2 to immediately: (1) supplement its insufficient and evasive answers to Interrogatory Nos. 6, 7, and 8; and (2) supplement its responses to the requests for production of documents contained within the Discovery Requests. Plaintiffs further requests that this Court award Plaintiffs their reasonable attorney fees and costs incident to bringing this Motion to Compel.

DATED this 21st day of September, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2012, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

Judy L. Geier
EVANS KEANE, LLP
1405 W. Main St.
P.O. Box 959
Boise, ID 83701-0959
Facsimile (208) 3345-3514
Attorneys for Defendant/Crossdefendant The Source Store, LLC

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendant/Crossdefendant The Source, LLC and Michael L. Hodge II

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Attorney for Defendant George M. Brown

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Brian L. Boyle
ATTORNEY AT LAW
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Facsimile (208) 361-8185
Attorney for Defendant/Counterclaimant/ Crossclaimant Christopher Claiborne

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Matthew J. McGee

E DON COPPLE
ED GUERRICABEITIA
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Telephone: (208) 342-3658
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ISB Nos. 1085 & 6148

Attorneys for Defendants/Cross-Defendants
Michael L. Hodge II and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHISTOPHER CLAIBORNE,

Counterclaimant,

vs.

DONNELLY PREHN AND DWIGHT BANKAK

Counterdefendants.

Case No. CV OC 1207728

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; AND MICHAEL L. HODGE II,

Cross-defendants.

STATE OF IDAHO)
) ss
County of Ada)

ED GUERRICABEITIA, being first duly sworn, deposes and says:

I am one of the attorneys for the Defendant, The Source, LLC ("Source 2") in this matter and make this Affidavit based upon my own personal knowledge.

Attached hereto and incorporated herein by reference is a true and correct copy of Source 2's letter dated September 21, 2012 in response to Plaintiffs' letter dated September 13, 2012, marked as Exhibit A.

On October 2, 2012, I had a telephone conference with Plaintiffs' counsel, Matthew McGee. After a brief discussion about the relevance of the documents and the effect of the Court's Order releasing the non-compete agreements, Mr. McGee advised me that Plaintiffs intended to move forward with their Motion to Compel unless Source 2 produced the documents requested in their request for production No. 8 through No. 15. We discussed the possibility of limiting the broad requests to more specific information sought and the possibility of the parties executing a protective order which he would get back to me on.

DATED this 3rd day of October, 2012.

Ed Guerricabeitia

SUBSCRIBED AND SWORN before me, a Notary Public, this 3rd day of October, 2012.

AYN McMILLAN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise
My commission expires: 6/18/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of October, 2012, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701 *Attorneys for Plaintiffs*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Charles C. Crafts Crafts Law Inc. 7363 Barrister Boise, Idaho 83704 *Attorney for Defendant George M. Brown*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Judy L. Geier Evans Keane, LLP 1405 W. Main St. P.O. Box 959 Boise, Idaho 83701-0959 *Attorneys for Defendant The Source Store, LLC*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Brian L. Boyle Attorney at Law 903 E. Winding Creek Dr., Ste. 150 Eagle, Idaho 83616 *Attorney for Defendant Christopher Claiborne*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail

Ed Guerricabeitia

W.DAVISON (1878-1964)
FRANK DAVISON (1907-1984)
R.H. COPPLE (1919-1995)

E DON COPPLE
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BOISE, IDAHO 83701

*Of Counsel

September 21, 2012

Sent Via Email &
U.S. Mail

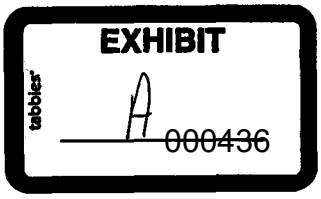
Matthew McGee
Moffatt Thomas Barrett
Rock & Fields
101 S. Capitol Blvd., 10th Fl.
Boise, ID 83702-7710

RE: Prehn et al v. Hodge et al.
Case No. CV OC 1207728

Dear Mr. McGee:

We received your letter dated September 13, 2012 suggesting that certain responses by The Source, LLC ("Source 2") to Plaintiffs' First Set of Interrogatories and Requests for Production were non-responsive or incomplete. Without waiving any objection or argument by Source 2 related to its answers and responses previously provided, Source 2 responds to your letter as follows.

With regards to Interrogatory No. 6, Source 2 restates its objections and responses previously provided on September 7, 2012. Subject to and without waiving those objections, Source 2 started hiring former employees of Source 1 on May 16, 2012 after Source 1, through Michael Hodge, sent an email on May 10, 2012 to all members of Source 1, including Plaintiffs and their counsel, advising that Source 1 was terminating certain employees by May 15, 2012 due to the dissolution of the company and lack of need for their services to complete the processing of the remaining purchase orders. This was known by all members and agreed to at the hearing on May 8, 2012 which resulted in the Court's Ordered entered on May 17, 2012. In April, 2012, Plaintiff Don Prehn informed all the board members of Source 1 of his intentions to compete against the company despite executing a non-competition agreement with the company. On May 18, 2012, an auction was held which Plaintiffs participated and Michael Hodge was awarded all of the intellectual property of Source 1, including but not limited to marketing and advertising strategies, designs name, logo, etc. . . In Mr. Hodge's responses to Plaintiffs' discovery, he produced a copy of the bill of sale of the purchase. Pursuant to the Court's Order



entered on May 18, 2012, Michael Hodge and Don Prehn were released from their non-competition agreements with Source 1 and the following week or two thereafter, Source 2 commenced operations, including but limited to marketing activities and sales activities.

With regards to Interrogatory No. 7, Source 2 restates its objections and responses previously provided on September 7, 2012. Subject to and without waiving those objections, Source 2 incorporates its response to Interrogatory No. 6 above. Mr. Hodge has already produced the names of Source 1 and Source 2's employees prior to discovery and through discovery to Plaintiffs, thus the information sought in this interrogatory is in Plaintiffs' possession. No compensation has been paid by Source 2 from February 2012 through May 16, 2012 since Source 2 had no employees nor commenced operations in that time period. Source 2 objects to the amount of compensation its pays its employees on the grounds that it is irrelevant, not reasonably calculated to lead to admissible evidence and seeks confidential and proprietary information of Source 2.

With regards to Interrogatory No. 8, Source 2 restates its objections and responses previously provided on September 7, 2012. Subject to and without waiving those objections, Source 2 commenced operations after May 18, 2012 and the customers and potential customers it has communicated with thereafter are not relevant and is information that is confidential and proprietary in nature in light of the fact that Plaintiffs seek to compete with Source 2. In addition, see the documents Bates Numbered as SOURCE 2 -1 through SOURCE 2 -28 which may contains names of customers and Hodge's response to Interrogatory No. 6 to Plaintiffs' First Set of Interrogatory and Requests for Production.

With regards to the financial records sought in Requests for Production 8 through 15 seeks confidential and proprietary information of the Source 2 which commenced operations after May 18, 2012. As you know, your clients failed to pay for those Lots in which they were the highest bidder in accordance with the instructions. Your clients participated and negotiated on the language, manner and auction process prescribed in the instructions. Ultimately, all the assets of Source 1 were acquired by Mr. Hodge. Further, it was understood by all parties that even though a party may own the property after the auction, the new owner could not restrict Source 1's ability to complete the processing of the existing purchase orders.

Both Source 1 and Mr. Hodge have made available for your inspection and copying of Source 1's server and hard files upon your request for appointment and at your expense. If the issue you speculate concerns the depletion of Source 1's assets and resources, the information you think exists should be on Source 1's server and hard copies.

We believe the foregoing responses provided herein are complete and responsive to the specific interrogatories identified in your letter. This letter will serve the same as if Source 2 prepared and served supplemental responses to these discovery requests unless you object otherwise to the manner the foregoing responses are supplemented.

Finally, enclosed herewith is Source 1's Open Orders report identifying the remaining purchase orders to be processed to complete the dissolution.

Thank you for your attention and cooperation.

Sincerely,

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm

Cc: Michael Hodge (via email)
Judy L. Geier (via email)
Brian L. Boyle (via email)
Charles C. Craft (via email)

The Source Store LLC
Open Orders Report - Regular And Fulfillment Orders

Date: 09/20/12 | Sorted By Slspsn #, Cust name, Order # | Page: 1
Time: 13:32:56 | Selected By Operator, Customer #, Ship date, Salesperson # | Oper: JA

Cd	Cust name	Ord #	Cust PO #	Ord date	Shp date	In hand	Followup	Item #	Sub#	Qty	Tot cost	Tot price	GP%
Salesperson # 44	**Mike Brown**												
	Body Building.com	19055	FL2400006	03/21/12	06/15/12	/ /	/ /	SHKRPTRTC		30240	21077.28	40824.00	48
					06/15/12	/ /	/ /	COLOR BASE		30240	1874.88	0.00	-100
					06/15/12	/ /	/ /	BAR CODES		30240	1058.40	0.00	-100
					06/15/12	/ /	/ /	BAGGED		30240	1209.60	0.00	-100
					06/15/12	/ /	/ /	SH		1	1600.00	2000.00	20
					06/15/12	/ /	/ /	CREDIT		1	-912.03	0.00	100
Totals for Ord # 19055										**120962**	**25908.13**	**42824.00**	**40**
	Universal Nutrition	19048		03/19/12	05/31/12	/ /	/ /	SHKRPTRTC		10332	7201.40	17357.76	59
					05/31/12	/ /	/ /	HEATTRANSF		20664	2314.37	0.00	-100
					05/31/12	/ /	/ /	HEATTRANSF		1	10.33	0.00	-100
					05/31/12	/ /	/ /	COLOR BASE		20664	1281.17	0.00	-100
					05/31/12	/ /	/ /	CREDIT		1	-212.24	0.00	100
					05/31/12	/ /	/ /	SH		1	330.77	441.03	25
Totals for Ord # 19048										**51663**	**10925.80**	**17798.79**	**39**

*** = Ack'd by vendor + = Incomplete order H = Order on hold/Credit hold B = Billing hold T = Transfer hold**
M = Mult slsprsn order. Order & cost amts reflect entire order - not slsprsn split.

The Source Store LLC
Open Orders Report - Regular And Fulfillment Orders

Date: 09/20/12 | Sorted By Slspsn #, Cust name, Order # | Page: 2
Time: 13:32:56 | Selected By Operator, Customer #, Ship date, Salesperson # | Oper: JA

Cd	Cust name	Ord #	Cust PO #	Ord date	Shp date	In hand	Followup	Item #	Sub#	Qty	Tot cost	Tot price	GP%
Grand totals										172625	36833.93	60622.79	39

* = Ack'd by vendor + = Incomplete order H = Order on hold/Credit hold B = Billing hold T = Transfer hold
M = Mult slsprsn order. Order & cost amts reflect entire order - not slsprsn split.

E DON COPPLE
ED GUERRICABEITIA
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ISB Nos. 1085 & 6148

Attorneys for Defendants/Cross-Defendants
Michael L. Hodge II and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHISTOPHER CLAIBORNE,

Counterclaimant,

vs.

DONNELLY PREHN AND DWIGHT BANKAK

Counterdefendants.

Case No. CV OC 1207728

AFFIDAVIT OF MICHAEL HODGE, II IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; AND MICHAEL L. HODGE II,

Cross-defendants.

STATE OF IDAHO)
) ss
County of Ada)

MICHAEL HODGE II, being first duly sworn, deposes and says:

I am one of the Defendants and a member and President of the Defendant, The Source, LLC ("Source 2") in this matter and make this Affidavit based upon my own personal knowledge.

On April 7, 2012, The Source Store, LLC ("Source 1") held a board meeting where all its members unanimously agreed and voted to dissolve the company. At the meeting, Donnelly Prehn informed all the members of his intentions to compete in the business. The members agreed that Source 1 would process and complete the existing purchase orders on the books at that time, but would not take on any new purchase orders.

Sometime thereafter, I was served with Plaintiff's First Amended Complaint and an Application for Temporary Restraining Order and Motion for Preliminary Injunction which was scheduled for May 8, 2012.

At the hearing on May 8, 2012, Mr. Prehn and I agreed, among other things, that we would be released from our non-compete agreements so we could conduct and compete in the business and hold the auction of Source 1's assets on May 18, 2012.

I provided all the members my proposed instructions to hold the auction for their review and suggestions. Numerous discussions, negotiations and revisions were made between Prehn and my counsel. I accepted a number of changes and requests suggested by Mr. Prehn to the instructions which were incorporated in the final instructions.

On May 18, 2012, Source 1 held its auction, and I was the highest bidder on Source 1's intellectual property and embroidery machine while Prehn was the highest bidder on the physical shaker cup molds and office equipment.

Pursuant to the instructions, the highest bidders had to deposit their funds with me by May 22, 2012. On May 22, 2012, I deposited the funds I owed on my bids for the intellectual property and embroidery machine into Source 1's account.

I was informed that Prehn was not going to deposit the funds with me, but instead was depositing the funds with his attorney because of an issue concerning the shaker cup molds. This did not comply with the final instructions and therefore the assets Prehn was awarded went to the second highest bidder which I was. I deposited the amount of my bids on the shaker cup molds and office equipment into Source 1's account.

I received a bill of sale for the assets I acquired and provided Plaintiffs a copy of them in my responses and answers to their First Set of Interrogatories and Request for Production.

As President of Source 2, I supplied its answers in response to Plaintiffs' First Set of Interrogatories and Request for Production, as well as the supplemental responses requested in Plaintiffs' letter dated September 13, 2012.

In Source 2's responses, I produced a letter from Syringa Bank's Senior Branch Operations Manager, Jenny Dolphus-Jordan, explaining the account activity of Source 2's bank

account. Attached hereto and incorporated herein by reference is a copy of the letter, marked as Exhibit A.

In addition, I also provided a portion of Source 2's Monthly Book Orders Report from the time it commenced operations and sales which reflected the first purchase order received by Source 2 was on May 18, 2012

DATED this 4th day of October, 2012.

M Hodge II
Michael Hodge, II

SUBSCRIBED AND SWORN before me, a Notary Public, this 4th day of October, 2012.

AYN McMILLAN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise
My commission expires: 6/18/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of October, 2012, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701 *Attorneys for Plaintiffs*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Charles C. Crafts Crafts Law Inc. 7363 Barrister Boise, Idaho 83704 *Attorney for Defendant George M. Brown*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Judy L. Geier Evans Keane, LLP 1405 W. Main St. P.O. Box 959 Boise, Idaho 83701-0959 *Attorneys for Defendant The Source Store, LLC*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail
Brian L. Boyle Attorney at Law 903 E. Winding Creek Dr., Ste. 150 Eagle, Idaho 83616 *Attorney for Defendant Christopher Claiborne*	✓ by U.S. Mail ____ by Hand Delivery ____ by Facsimile ____ by Electronic Mail

Ed Guerricabeitia

Syringa Bank
Expertise • Integrity • Value

September 7, 2012

The Source LLC

3637 N. Lake Harbor Lane

Boise ID 83703

To whom it may concern,

The source LLC opened account number 402009823 on 04/17/2012 with Syringa Bank. The account had a zero balance at opening. There were no transactions that occurred between 04/17/2012 and 05/17/2012. As of the end of business 05/17/2012 the account remained at a zero balance.

Sincerely,

Jenny Dolphus-Jordan

Senior Branch Operations Manager

208-947-9368

EXHIBIT
A
000446

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ED GUERRICABEITIA
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Attorneys for Defendants/Cross-Defendants
Michael L. Hodge II and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

MEMORANDUM IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

CHISTOPHER CLAIBORNE,

Counterclaimant,

vs.

DONNELLY PREHN AND DWIGHT BANKAK

Counterdefendants.

CHRISTOPHER CLAIBORNE,

Crossclaimant,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; AND MICHAEL L. HODGE II,

Cross-defendants.

COMES NOW Defendant, The Source, LLC (hereinafter "Source 2"), by and through its attorneys of record, Davison, Copple, Copple & Copple, and hereby submits its memorandum in support of the Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel .

I. STATEMENT OF FACTS

On April 7, 2012, all members of The Source Store, LLC (hereinafter "Source 1") held a meeting and unanimously agreed and voted to dissolve the company. Aff. of Hodge. At said board meeting, Plaintiff Donnelly Prehn informed all the board members of his intentions to compete in the industry. *See id.* In addition, it was agreed by the members, including Plaintiffs, that The Source Store, LLC would process the existing purchase orders, but take on no new purchase orders as of that date. *See id.*

On April 27, 2012, Plaintiffs filed their First Amended Complaint against the Defendants, including Source 2. *See* Court record.

Shortly thereafter on May 3, 2012, Plaintiffs' filed their application for Temporary Restraining Order and Motion for Preliminary Injunction which scheduled to be heard on May 8, 2012. No counsel had yet to appear on behalf of any of the Defendants. *See* Court record.

On May 8, 2012, Defendant, Donnelly Prehn ("Prehn") appeared with his counsel, along with Defendants, Michael L. Hodge, II ("Hodge") and George M. Brown, with the undersigned

counsel. The parties negotiated and agreed in principle that Source 1 would hold its auction on May 18, 2012, that Prehn and Hodge would be released from their respective non-compete agreements on May 18, 2012, that Source 1 would continue to process the existing purchase orders, that Hodge would use his best efforts to reduce the overhead and expense to absolute minimum necessary to complete the Dissolution and processing of the existing purchase orders, that the proceeds from the existing purchase orders would be held in an account which bona fide and legitimate costs and expenses arising from the Dissolution could be paid out from the account. The foregoing agreement was recited in open Court on the record.

After numerous discussions and negotiations concerning the language of the proposed Order, the Court entered its Order on May 17, 2012.

Following the May 8th hearing, Hodge prepared and distributed to all members and participants, including counsel, proposed instructions for the auction. Plaintiffs raised several concerns regarding the instructions. Plaintiffs and Hodge, through counsel, held numerous discussions and negotiated the manner, terms, language, and procedure the auction process would proceed.

On May 18, 2012, the auction of Source 1's assets was held and the awarded the highest bidders. Plaintiffs were the highest bidders on the physical shaker cup molds and office equipment, while Hodge was the highest bidder for the embroidery machines and all of Source 1's intellectual property. Pursuant to the instructions, the highest bidder had until May 22, 2012 to tender and deposit the funds with Hodge, otherwise the asset would be awarded to the second highest bidder. Plaintiffs failed to comply with the instructions to tender the funds to Hodge, instead depositing their funds with their counsel.

After May 18, 2012, Source 2 began to take new purchase orders for its business. Aff. of Hodge.

On or about July 27, 2012, Plaintiffs served their First Set of Interrogatories and Request for Production to Source 2 by mail. After obtaining an extension from Plaintiffs' counsel, Source 2 served its answers and response to Plaintiffs' discovery requests on September 7, 2012.

On August 29, 2012, The Source Store, LLC ("Source 1") served its answers to Plaintiffs' First Set of Interrogatories and Requests for Production which specifically made available for Plaintiffs inspection and copying, Source 1's server and hard filers at Plaintiffs' expense. Source 2 is informed that Plaintiffs have scheduled its inspection of Source 1's server and hard files for October 9, 2012.

On September 13, 2012, Plaintiffs served a letter, by email and mail, asserting that Source 2's responses to certain interrogatories were incomplete and/or non-responsive and that requests for production of documents seeking Source 2's financial records, business and strategic plans, purchase orders received, and other business records were not provided. The letter further stated that Source 2 had until September 20, 2012 to submit its responses to the letter and that the letter served as the meet and confer obligation pursuant to I.R.C.P. 37(a)(2). Aff. of McGee, Ex. C. In their letter with regards to their request to Interrogatory No. 6, Plaintiffs acknowledged that "Source 2's responses describes only the date on which Source 2 commenced taking and processing orders with customers." *See id.*

On September 21, 2012, Source 2 served by email and mail, its response to Plaintiffs' letter dated September 13, 2012. Aff. of Counsel, Ex. A.

On September 24, 2012, Source 2 received Plaintiffs' Motion to Compel and accompanying documents.

On October 2, 2012, Source 2's counsel contacted Plaintiffs' counsel to see if their Motion to Compel would proceed to hearing in light of Source 2's response at which time Plaintiffs' counsel stated that the hearing would move forward to compel the production of Source 2's financial records, business and strategic plans, purchase orders received, and other business records sought in the requests regardless of the parties stipulation and Court's Order releasing the Prehn and Hodge from their non-compete agreements and the documents already produced showing that Source 2 commenced taking and placing orders after May 18, 2012. Aff. of Counsel.

II. LEGAL ARGUMENT

A. Standard of Review

Rule 26(c) of the Idaho Rules of Civil Procedure states:

> Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matter relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information inclosed in sealed envelopes to be opened as directed by the court.
>
> If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

In *Selkirk Seed Co. v. Forney,* 134 Idaho 98, 104-05, 996 P.3d 798 (2000), the Idaho Supreme Court held that a district court's decision to grant a protective order under I.R.C.P. 26(c) was discretionary.

Rule 37(a) of the Idaho Rules of Civil Procedure provides the basis to move the district court to order a party to respond and permit inspection of documents requested. I.R.C.P. 37(a)(2). However, the motion to compel the information requested is not mandatory, but discretionary: "If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 26(c)." *See id.*

Rules 26 and 37 of the Idaho Rules of Civil Procedure directly compete with each other leaving the district court to decide the issue of whether certain information sought should be disclosed or protected on a case by case basis.

In the case at hand, Plaintiffs' asserted six causes of action against Source 2: (1) violation of Idaho Trade Secrets Act; (2) violation of Lanham Act; (3) violation of Idaho's common law on trade name and trademark infringement; (4) unjust enrichment; (5) tortious interference with contract and (6) injunctive relief.

In their Memorandum, Plaintiffs state, "[A]t issue in this case, among other things, is the depletion of the assets and financial resources of The Source Store, LLC ("Source 1") for the sole and exclusive benefit of Source 2 and its members." *See* Plaintiffs' Memorandum, p. 5. Plaintiffs do not identify what assets and financial resources of Source 1 have been allegedly depleted for the benefit of Source 2. Source 1 has already made available its server and hard files for Plaintiffs inspection and copying which would contain the information Plaintiffs seek and allege is at issue.

Plaintiffs completely disregard that Prehn and Hodge were released from their non-compete agreements and were free to compete in the business conducted by Source 1 as of May 18, 2012 under the Court's Order and that all of Source 1's assets were auctioned off on May 18, 2012 which were ultimately acquired and paid for by Hodge because Plaintiffs elected not to comply with the instructions they participated and negotiated. Hodge owns all of Source 1's assets.

The issue in this case as it relates to Source 2 is whether there was a depletion of the assets and financial resources of The Source Store, LLC ("Source 1") for the sole and exclusive benefit of Source 2 and its members **prior to May 18, 2012.** Financial information and business and strategic records post May 18, 2012 are not relevant nor reasonably calculated to lead to the discovery of admissible evidence based on Plaintiffs own concession and agreement made on May 8, 2012. Plaintiffs' complaint and causes of action against Source 2 relate to acts allegedly conducted prior to their agreement and the Court's Order. Source 2 has responded and provided Plaintiffs the information pertinent and relevant to Source 2's actions expressed in Interrogatory No. 6 which stated and requested:

> Please state the date on which The Source , LLC **commenced operations,** both nationally and internationally, and describe all of the activities, contracts and transactions of The Source, LLC that **constituted the commencement of operations,** including but not limited to, marketing, sales activities and employee recruitment. (Emphasis added).

Specifically responsive to this interrogatory, Source 2 filed a Certificate of Organization on April 16, 2012; opened up a checking account with Syringa Bank on April 17, 2012 which account had no transactions taken place between April 17, 2012 through May 17, 2012; the account had a zero balance as of May 17, 2012 and on May 16, 2012, Source 2 hired certain former employees of Source 1that were not needed to complete the processing of the existing

purchase orders which Hodge was ordered to minimize the overhead and expenses to complete the Dissolution of Source 1. This was all the actions on behalf of Source 2 prior to May 18, 2012 which Plaintiffs requested. *See,* Aff. of Counsel, Ex. A, *see also,* Aff. of Hodge, Ex. B and Ex. C attached to Plaintiffs' Second Amended Complaint.

Plaintiffs recognized and acknowledged that Source 2 produced the information and date on which it commenced taking and processing orders with customers which was after May 18, 2012.

Plaintiffs complain and allege that Source 2's financial records, along with their marketing strategies, sales strategies, business plans, customer lists, and any other business and financial record of Source 2, after May 18, 2012 is relevant to their claims. More importantly, the marketing strategies, sales strategies, business plans, customer lists, and any other business record of Source 2 was formerly the intellectual property of Source 1 which Hodge acquired without dispute at the auction on May 18, 2012 and now is subsequently owned by Source 2.

Incidentally, Plaintiffs allegations against Source 2 are on behalf of Source 1 and its members. Hodge acquired and paid Source 1 for its assets in a fair and open auction which Plaintiffs participated. Source 1 has no claim of damages under Idaho's Trade Secret Act or its common law trade name and trade mark infringement or for violation of the Lanham Act because it was already paid through the auction.

III. CONCLUSION

Based on the arguments presented, the Plaintiffs' concessions and agreement to be released from the non-compete agreements and the evidence submitted in the record, Defendant Source 2 respectfully requests that the Court enter its Protective Order prohibiting the disclosure

of its financial and business records sought in Plaintiffs' request for production of documents after May 18, 2012 and deny the Plaintiffs' Motion to Compel for the same information.

DATED this 4th day of October, 2012.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for The Source, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of October, 2012, a true and correct copy of the foregoing was served upon the following:

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Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

REPLY IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

I. INTRODUCTION

In response to Plaintiffs' Motion to Compel and in support of a protective order, Source 2 appears to argue that the Court should impose an arbitrary cut-off date for the discovery of information in this case based on a date set forth in the Court's Order Re: Dissolution of The Source Store, LLC and Related Matters ("Dissolution Order"). The Dissolution Order, entered May 17, 2012, provided that Prehn and Hodge were released from their respective Non-Compete Agreements on May 18, 2012. Source 2 contends that, for some reason, its business and financial information should be off-limits after that date. The Dissolution Order does not, as Source 2 appears to contend, suggest that discovery of information in the instant lawsuit is somehow limited to the time period prior to that May 18, 2012 date. The scope of discovery in civil litigation is broad, and in the absence of undue burden or privilege, Source 2 is not entitled to a protective order, and the Court should compel complete answers to interrogatories and the production of responsive documents.

II. ARGUMENT

A. Source 2 Has Failed to Demonstrate Good Cause for a Protective Order.

Idaho Rule of Civil Procedure 26, the rule governing discovery in civil litigation, "has been interpreted to allow the broadest possible discovery." *Caldera v. Tribune Pub. Co.*, 98

Idaho 288, 306, 562 P.2d 791, 809 (1977). Source 2 cites Rule 26(c) for the proposition that it is entitled to a protective order regarding the written discovery requests at issue. *See* Memorandum in Support of Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel ("Source 2 Memorandum") at 5. Rule 26(c) provides that "**for good cause shown**, the court . . . may make any order which justice requires to **protect a party from annoyance, embarrassment, oppression, or undue burden or expense**." I.R.C.P. 26(c). In light of the breadth of discovery under Rule 26, Source 2 bears the burden to show "good cause" why it should be protected from having to respond to the discovery requests of the Plaintiffs. *See e.g. Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) ("A party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted."); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir.1994) ("In the context of discovery, it is well-established that a party wishing to obtain an order of protection over discovery material must demonstrate that 'good cause' exists for the order of protection.").

In its submissions, Source 2 fails to make any showing of good cause. It does not articulate any "annoyance, embarrassment, oppression, or undue burden or expense" related to the written discovery at issue, and from which it deserves protection. Indeed, the Affidavit of Michael Hodge II submitted in support of a protective order largely describes the auction held by Source 1, which auction has nothing to do with Source 2 or its obligations to respond to written discovery in this case. *See* Affidavit of Michael Hodge II in Support of Motion for Protective Order and in Opposition to Plaintiff's Motion to Compel ("Hodge Aff."). It addresses the written discovery only insofar as it describes the only two responsive items produced. *See id.*

The Affidavit of Counsel suffers from the same deficiency. It describes efforts to meet and confer. *See* Affidavit of Counsel in Support of Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel ("Counsel Aff."). It fails, however, to articulate any good cause to protect Source 2 from having to fully respond to the Plaintiffs' written discovery.

Because Source 2 has failed to show good cause to protect it from responding to the discovery requests at issue, and has failed to even articulate any embarrassment, oppression, annoyance, undue burden or undue expense that may result from such response, Plaintiffs respectfully request that the Court grant the Motion to Compel and deny Source 2's Motion for Protective Order.

B. The Discovery Requests Clearly Fall Within the Scope of Allowable Discovery in This Case.

Although the written discovery requests do not have to meet the relevance thresholds set forth in the Idaho Rules of Evidence because the standard in pre-trial discovery is whether the request is "reasonably calculated to lead to the discovery of admissible evidence," it is not difficult to envision the potentially relevant information that might be gleaned from the discovery requests at issue. Source 2 asserts that this case is about "whether there was a depletion of the assets and financial resources of The Source Store, LLC ("Source 1") for the sole and exclusive benefit of Source 2 and its members **prior to May 18, 2012**." *See* Source 2 Memorandum at 7 (emphasis in original). That is true, with the very important exception this case is not limited to dates prior to May 18, 2012. There is no such temporal limitation in this case, and the written discovery requests clearly seek information reasonably calculated to lead to the discovery of admissible evidence in accordance with Rule 26. As one of many examples, the Second Amended Complaint ("Complaint") alleges as follows:

> **Source 2, by unfair and inequitable means, has obtained, is obtaining and will, unless enjoined, continue to obtain substantial benefits** and competitive advantages of substantial economic value **in the form of the Source 1 labor and equipment** while Hodge acts to wind down Source 1 and contemporaneously **diverts Source 1 revenue and profits to Source 2**, as well as the business opportunities, trade secrets, trade name, trade dress, business methods, customer lists, Existing Purchase Orders and New Purchase Orders that belong to Source 1.

See Complaint, ¶ 129 (emphasis added).

The unwarranted or improper depletion of Source 1 assets **on or after May 18, 2012** for the benefit of Source 2 and its members is certainly within the scope of this lawsuit, and notwithstanding Source 2's complete failure to demonstrate any undue burden, it is not difficult to identify the relationship between the requested financial documents and information and the issue of misappropriation. Indeed, the Dissolution Order entered by stipulation in this case expressly addresses the prospective conduct of the parties as it pertains to winding up and the use and protection of Source 1 members' resources and assets, and imposes obligations related thereto. *See* Dissolution Order at ¶¶ 1, 4, 8, 10. Moreover, Plaintiffs did not by virtue of stipulating to entry of the Dissolution Order, waive the right to pursue their claims against Source 2 or any other party. *See id.* at ¶ 9 (". . . nothing contained herein or in the parties stipulation shall be deemed to have waived any such claims or any other claims of the parties . . ."). It is completely disingenuous to suggest that Plaintiffs are not entitled to discover information that bears directly on issues, conduct and obligations that are expressly addressed in not only the Complaint, but the Dissolution Order issued in this case.

Source 2 also appears to argue that because the Plaintiffs sought certain information and documents from Source 1, similar information and documents need not be

produced by Source 2. It notes that "Source 1 has already made available its server and hard files for Plaintiffs inspection and copying." *See* Source 2 Memorandum at 6. Notwithstanding the fact that, for the purpose of customers and employees of "The Source" as a business enterprise, "The Source" may have simply transitioned into management under Source 2, Source 1 and Source 2 are indeed separate business entities. Both are parties to this lawsuit. Both are obligated to provide responses to discovery. Both should have separate accountings, bank statements, records, and financial information. Source 2's assertion that it does not have to provide any financial information after May 18, 2012 because Source 1 has invited Plaintiffs to comb Source 1's server and filing cabinets is without merit. Source 2 has an independent duty to respond to written discovery.

Finally, Source 2 argues that the Plaintiffs "disregard that Prehn and Hodge were released from their non-compete agreements and were free to compete in the business conducted by Source 1 as of May 18, 2012." *See* Source 2 Memorandum at 7.[1] The Plaintiffs acknowledge that the Court so ordered, but only "disregard" it because it bears no relationship to the scope of allowable discovery in this case. That Hodge and Prehn were released from their obligations not to compete with Source 1 on May 18, 2012 does not somehow mean that Source 2 need not comply with the rules of discovery.

---

[1] In making its argument about the non-compete release, Source 2 contends that "Hodge owns all of Source 1's assets" because he purchased certain assets at the auction of May 18, 2012. *See* Source 2 Memorandum at 7. It is absolutely critical to clarify such a misrepresentation or misunderstanding. Hodge does **not** "own **all** of Source 1's assets." Hodge, or his successor in interest, owns only those assets he validly purchased at the auction. As of the date of this filing, Source 1 continues to wind up, and continues to have assets and liabilities. For example, the purchase money obtained by Source 1 from the auction of certain Source 1 property is a Source 1 asset. Hodge does not own that asset.

For the foregoing reasons, Plaintiffs are immediately entitled to responses and production of documents responsive to their written discovery requests. Source 2 can offer no reasonable grounds for it to avoid its obligation to fully respond.

C. Plaintiffs Have Attempted to Resolve this Discovery Dispute Without Judicial Intervention.

During the course of the October 2, 2012 telephone call Source 2 refers to in its Memorandum and the Affidavit of Counsel, counsel for Source 2 acknowledged that the scope of discovery is broad, but nonetheless expressed concerns about relevance, and about the confidential and/or proprietary nature of certain requests for production. *See* Second Affidavit of Matthew J. McGee in Support of Motion to Compel, ¶ 2. Counsel for Plaintiffs responded to such concerns during that telephone conversation by offering to negotiate a stipulated protective order to address any of Source 2's concerns about confidential or proprietary information to avoid bringing the matter before the Court, and also agreed to provide a narrow and specific description of certain of the financial records Plaintiffs were seeking. *See id.* at ¶¶ 2-3. On October 4, 2012, counsel for Plaintiffs followed up with counsel for Source 2 with an e-mail that very clearly detailed certain financial information that Source 2 did not provide in response to Plaintiffs' written discovery requests, and reiterated a willingness to negotiate a stipulated protective order. *See id.* at ¶ 4 & Exh. A. Counsel for Source 2 did not respond, and Source 2 did not provide the requested financial information. *See id.* The foregoing demonstrates Plaintiffs' willingness to resolve this matter without resort to judicial intervention. It also tends to demonstrate that concerns about confidentiality, as well as any assertion that Source 2 did not understand what Plaintiffs sought in their requests, are pretext for what amounts to a bare refusal to comply with discovery rules.

III. CONCLUSION

Source 2 ignores the well-established breadth of allowable discovery, and moreover, takes the completely untenable position that in a lawsuit addressing not only the unjust enrichment of Source 2 during the winding up of Source 1, but also the fiduciary obligations of Mr. Hodge (who, in addition to being the person responsible for winding up Source 1, is the manager of Source 2), Source 2's financial information during the winding up period is "not relevant or reasonably calculated to lead to the discovery of admissible evidence." *See* Source 2 Memorandum at 7. Especially in light of the Plaintiffs efforts and willingness to cooperate in addressing concerns about confidentiality, the Court should not countenance the argument that the documents need not be produced. Source 2 has not met its burden, nor has it attempted to meet its burden to show "good cause" and demonstrate that the written discovery requests at issue subject it to "annoyance, embarrassment, oppression or undue burden." *See* I.R.C.P. 26(c). The Plaintiffs are entitled to discover information that is reasonably calculated to lead to the discovery of admissible evidence, and therefore respectfully request that the Court order the production of all documents responsive to Plaintiffs' written discovery requests to Source 2.

DATED this 12th day of October, 2012.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2012, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

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Attorney for Defendant George M. Brown

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Attorney for Defendant/Counterclaimant/ Crossclaimant Christopher Claiborne

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Matthew J. McGee

civil 7/13/12
OWEN
10/15/12
AM
10/16/12 Mtn.

Michael O. Roe, ISB No. 4490
Matthew J. McGee, ISB No. 7979
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24853.0000

Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

SECOND AFFIDAVIT OF MATTHEW J. MCGEE IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

STATE OF IDAHO)
) ss.
County of Ada)

MATTHEW J. MCGEE, having been duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys of record for Plaintiffs/Counterdefendants Donnelly Prehn and Dwight Bandak (the "Plaintiffs") in this matter, have access to my clients' files, and make this affidavit based upon my personal knowledge.

2. On October 2, 2012, I received a telephone call from Ed Guerricabeitia, counsel for The Source, LLC ("Source 2") and Michael L. Hodge II. We discussed whether the discovery requests that are at issue in the Plaintiffs' Motion to Compel were relevant under the discovery standards of the Idaho Rules of Civil Procedure. Mr. Guerricabeitia acknowledged that the scope of discovery is broad, but he also expressed concerns about the confidential or proprietary nature of the information requested in light of the fact that Mr. Hodge and Mr. Prehn had been released from their obligation not to compete with The Source Store, LLC. In response to such expressed concerns, I offered to negotiate the terms of a stipulated protective order

acceptable to the parties. Mr. Guerricabeitia did not respond to the offer during our conversation.

3. During our conversation on October 2, 2012, Mr. Guerricabeitia also expressed concerns about the breadth or burden represented by the requests at issue. I noted that, in light of the fact that Source 2 has only been operating for approximately six (6) months, it did not seem that the requests at issue were in fact too broad or burdensome. However, I agreed to provide Mr. Guerricabeitia a list of documents I believed would, in part, be responsive to several of the critical discovery requests at issue.

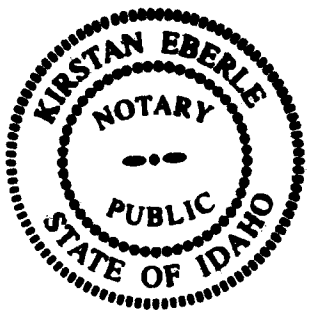
4. On October 4, 2012, in order to follow up on our conversation of October 2, 2012, I sent an e-mail to Mr. Guerricabeitia describing in detail certain financial and other information the Plaintiffs were seeking, and again suggesting the negotiation of a stipulated protective order. Attached hereto as Exhibit A is a true and correct copy of such e-mail, dated October 4, 2012. The e-mail was addressed and sent to edg@davisoncopple.com. This firm has addressed several e-mails to Mr. Guerricabeitia at such address during the course of this litigation, to which Mr. Guerricabeitia has responded. This firm has likewise received several e-mails from the foregoing e-mail address, including the delivery of various documents and correspondence.

5. Mr. Guerricabeitia did not respond to the October 4, 2012 e-mail, nor did Source 2 provide documents responsive to the identified discovery requests or responsive to the detailed list.

Further your affiant sayeth naught.

Matthew J. McGee

SUBSCRIBED AND SWORN to before me this 12th day of October, 2012.



Kirstan Eberle
NOTARY PUBLIC FOR IDAHO
Residing at Ada County
My Commission Expires July 14, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of October, 2012, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF MATTHEW J. MCGEE IN SUPPORT OF MOTION TO COMPEL RESPONSES OF THE SOURCE, LLC TO PLAINTIFFS' DISCOVERY REQUESTS** to be served by the method indicated below, and addressed to the following:

Judy L. Geier
EVANS KEANE, LLP
1405 W. Main St.
P.O. Box 959
Boise, ID 83701-0959
Facsimile (208) 3345-3514
Attorneys for Defendant/Crossdefendant The Source Store, LLC

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( ) Hand Delivered
( ) Overnight Mail
(X) Facsimile

Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendant/Crossdefendant The Source, LLC and Michael L. Hodge II

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Charles Crawford Crafts
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Attorney for Defendant George M. Brown

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Brian L. Boyle
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Facsimile (208) 361-8185
Attorney for Defendant/Counterclaimant/ Crossclaimant Christopher Claiborne

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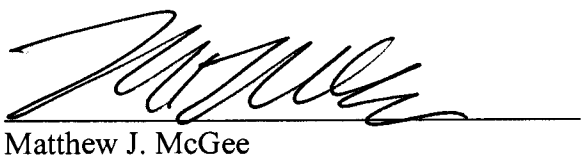
( ) Overnight Mail
(X) Facsimile



Matthew J. McGee

Exhibit A

Matt McGee

From: Matt McGee
Sent: Thursday, October 04, 2012 3:16 PM
To: edg@davisoncopple.com
Cc: Mike Roe
Subject: Source 2 Discovery

Ed,

As promised, here is a more specific list of Source 2 documents we believe we are entitled to review based on our discovery requests:

Income Statement - 4-16-12 thru 4-30-12
Income Statement - 5-1-12 thru 5-31-12
Income Statement - 6-1-12 thru 6-30-12
Income Statement - 7-1-12 thru 7-31-12
Income Statement - 8-1-12 thru 8-31-12
Income Statement - 9-1-12 thru 9-30-12

Profit and Loss Balance Sheet - Dated 4-16-12
Balance Sheet - Dated 4-30-12
Balance Sheet - Dated 5-31-12
Balance Sheet - Dated 6-30-12
Balance Sheet - Dated 7-31-12
Balance Sheet - Dated 8-31-12
Balance Sheet - Dated 9-30-12

Monthly credit card statements for all transactions on company credits cards in April, May, June, July, August and September.

All expense reports documenting all meals, entertainment and travel expense by any owner and/or employee of Source 2.

Expense category breakdown from Profit & Loss Statements for the following:

Business Promo
Travel (Meals and Entertainment)
Travel (Airfare and Hotels)
China Employee Travel
Office Wages & Salaries
Officer's Salary & Bonus
Guaranteed Payment Mike Hodge
Auto Fuel
Auto Repairs/Maintenance
Auto Payments
Payroll Taxes
Insurance - Employees
Telephone/Cell Phones
IT Expense
Office Supplies and Expense

Consulting Fees
Legal and Accounting

I again reiterate that I am happy to discuss your client's concerns about confidentiality and a stipulated protective order in order to review the above-identified documents. Please advise.

MATT MCGEE
Phone: 208.385.5416
Fax: 208.385.5384
email mjm@moffatt.com
web www.moffatt.com

Moffatt Thomas

Jed W. Manwaring ISB #3040
Judy L. Geier ISB #6559
EVANS KEANE LLP
1161 River Street, Suite 100
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Telephone: (208) 384-1800
Facsimile: (208) 345-3514
E-mail: jmanwaring@evanskeane.com
jgeier@evanskeane.com

Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **AFFIDAVIT OF MICHAEL L. HODGE, II,**
And cross claims and counterclaims.	

STATE OF IDAHO)
) ss.
County of Ada)

MICHAEL L. HODGE, II, being first duly sworn upon oath, deposes and states as follows:

1. I am the appointed liquidator of The Source Store, LLC (interchangeably "Source I" and the "Company") and one of its founding owners. As such, I have personal knowledge of the facts herein.

2. On or about April 2012, all the members of Source I unanimously voted to dissolve the Company. On May 8, 2012, the parties to this litigation stipulated on the Court's record to the dissolution and wind up of Source I. Attached as **Exhibit 18** is a true and correct copy of the Court's Order Re: Dissolution of The Source Store, LLC, and Related Matters (the "Order") memorializing the parties' stipulation.

3. I was charged with minimizing costs of operation while processing Source I's existing customer orders, selling Source I's assets, and closing out the Company's recording-keeping. In addition, as part of my duties as liquidator, I was required to manage Source I's responses in this litigation and to provide unfettered access to the Company's records to all parties to the litigation.

4. In accordance with my responsibilities, I reduced Source I's staff to only essential personnel necessary for the processing of the existing orders. In May, Source I had eight employees who were actively completing orders and providing administrative functions. That number was reduced to four in June and two in August as most existing orders had been processed, and no new orders had been accepted by the Company after April 6, 2012.

5. Source I's book-keeper of six years, Jesse Arp, left the Company on September 14, 2012. Jade Welch was hired to replace him on September 6, 2012, and for a brief period there was a slight overlap in their salaries. This occurred in September. This was necessary to provide Ms. Welch with training on the Company's ProfitMaker system.

6. During the ongoing process of this litigation and in the middle of the Company's wind up, Ms. Welch quit on December 4, 2012. Janae Young was hired to replace Ms. Welch on December 12, 2012. Ms. Young found multiple errors in the book-keeping that appeared to have occurred between September and November 2012.

7. When Ms. Young was hired, Source I was receiving pressure from the litigants in this matter to complete its final wind up reporting. Ms. Young was required to spend overtime hours

resolving issues with the prior book-keeper's entries, reviewing the book-keeping with Mike Haffen from the accounting firm of Richter, Stuart & Todeschi, P.A, and learning the company's ProfitMaker system so that Source I could timely respond to the litigants' demands for accounting records.

8. Additionally, Source I was embroiled in a dispute on or about November 2012 with a customer regarding an accounts receivable.

9. The Order designated Source I's business account with Syringa Bank as the Dissolution Account. Syringa Bank notified Source I on or about December 5, 2012, that the account must now be closed for inactivity. Attached as **Exhibit 19** is a true and correct copy of an email from Lyle Cook, Syringa Bank requiring the Dissolution Account to be closed.

10. As of today's date, Source I's Dissolution Account shows cash balance of $33,470.02. Source I's Balance Sheet for January 2013 shows cash balance of $20,547.86.

11. Subject to the claims in this litigation and future ongoing costs and fees therewith, Source I's liabilities as of this date have been paid with the exception of future costs anticipated for year-end tax filings for 2012 and for 2013.

12. Source I has two existing accounts receivable. One account receivable in the amount of $1,029, is owed to the Company by the Defendant Christopher Claiborne and will be paid as an offset to any distribute he receives from the Company's assets.

13. The second account receivable totals an amount of $26,101.23 and originates from a restocking dispute with one of Source I's final customers. Source I has written this accounts receivable off as a bad debt. In my business judgment as the liquidator of Source I, I have determined that Source I would not benefit from depleting its assets to pursue collection of this amount nor does it have sufficient resources to pursue an action to attempt to collect this accounts

receivable. I therefore decline on behalf of Source I to pursue a collection action for this account receivable.

14. Likewise, I have determined in my business judgment as the liquidator of Source I that Source I would not benefit from nor does it have sufficient resources to pursue the claims asserted on behalf of Source I in Plaintiffs' Second Amended Complaint filed on July 2, 2012. I therefore decline to prosecute such claims on behalf of Source I.

DATED this 17th day of January, 2013.

The Source Store, LLC

By: _____
Michael L. Hodge, II
Its: Managing Member and Liquidator

SUBSCRIBED AND SWORN to before me this 17th day of January, 2013.

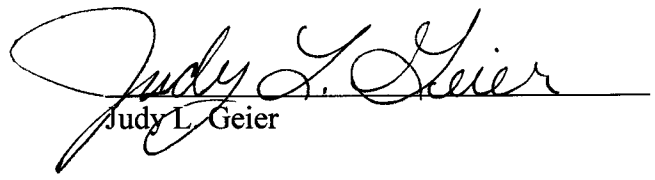
BRITTANY ROBERTS NOTARY PUBLIC STATE OF IDAHO

_____
Notary Public for Idaho
Residing at: Kuna
My Commission Expires: 07-01-2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2013, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Michael O. Roe MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 101 S. Capitol Blvd., 10th Fl P.O. Box 829 Boise, ID 83701 *Attorneys for Plaintiffs*	[ ] U.S. Mail [ ] Fax [ ] Overnight Delivery [✓] Hand Delivery
Edward J. Guerricabeitia DAVISON COPPLE COPPLE & COPPLE, LLC P.O. Box 1583 Boise, ID 83701-1583 *Attorneys for Defendant Michael L. Hodge II and The Source, LLC*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Charles C. Crafts CRAFTS LAW INC. 7363 Barrister Boise, ID 83704 *Attorney for Defendant George M. Brown*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Brian L. Boyle 903 E. Winding Creek Dr., Ste. 150 Eagle, ID 83616 *Attorney for Defendant Christopher Claiborne*	[✓] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery



Judy L. Geier

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

ORDER RE: DISSOLUTION OF THE SOURCE STORE, LLC AND RELATED MATTERS

The Court, having received the Application for Temporary Restraining Order and Motion for Preliminary Injunction, Memorandum in Support of Application for Temporary Restraining Order and Motion for Preliminary Injunction, the First and Second Affidavits of Donnelly Prehn in Support of Application for Temporary Restraining Order and the Affidavit of Counsel in Support of Application for Temporary Restraining Order, each as filed by the plaintiffs Donnelly Prehn ("Prehn") and Dwight Bandak (collectively, the "Plaintiffs"); this matter and such application having come before the Court for hearing on May 8, 2012, at 9:00 a.m.; Prehn, appearing in person and accompanied by his counsel, Michael O. Roe and Mr. Roe

having also appeared for Plaintiff Bandak; the defendants, The Source, LLC ("Source 2"), Michael L. Hodge II ("Hodge") and George M. Brown ("Brown"), appearing in person and accompanied by their counsel, Edward J. Guerricabeitia, and based on Mr. Guerricabeitia's representation that he also represents defendant Christopher Claiborne, who was not present in person (collectively with Source 2, Hodge and Brown, the "Hodge Defendants"); The Source Store, LLC ("Source 1"), the defendant entity which is the subject of the dissolution at issue in this matter and currently unrepresented, which did not appear at the hearing; and the parties having stipulated, orally, on the record to the matters set forth below;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The dissolution and winding up of Source 1 (the "Dissolution") shall be completed as soon as is reasonably practicable, with the participation and cooperation of all parties, in a manner which is fully transparent, accountable, fair and equitable to all members of Source 1 and with a view to discharging all legitimate debts and other obligations of Source 1 and maximizing the return and final distribution of all remaining funds to all Source 1 members.

2. The parties stipulate and agree that there are approximately $900,000.00 in open purchase orders from Source 1 customers in various stages of processing, which are assets of Source 1 (the "Existing Purchase Orders"). As part of the Dissolution, the Existing Purchase Orders shall be processed by Source 1, using Source 1 offices, equipment and personnel, in a manner consistent with the parameters set forth in paragraph 1 above.

3. The parties further stipulate and agree that, in addition to the Existing Purchase Orders, Source 1 is the rightful owner of tangible personal property assets, as set forth on that certain 2011 Federal Summary Depreciation Schedule, dated December 31, 2011, and previously circulated to the parties by Hodge (the "Assets"). As part of the Dissolution, the

Assets shall be sold by Source 1, pursuant to an open auction process whereby any bidder, including without limitation any Plaintiff or the Hodge Defendants, can make successive bids by e-mail on one or more such Assets through close of business on May 17, 2012 and all such bids shall be immediately disclosed to and reviewed by any such bidder or party. Any bidder, including each party, shall then by e-mail notice to Source 1 have the right to request a "live auction" to be conducted in person and/or by telephone conference on May 18, 2012, to allow such bidders to hear competing bids and, if any such bidder elects, to offer higher bids, which process will produce the highest prices for the Assets and maximum return to all Source 1 members. Because some or all of the Assets will be necessary for Source 1 to complete the processing of the Existing Purchase Orders, the Assets shall be sold with the stipulation that such Assets will not be delivered to the buyer until all of the Existing Purchase Orders have been processed. Each party shall have full, complete and open access to such Assets and all of the records or other documents relating to such Assets immediately, in order to assist such party in formulating its bid(s). The bidding shall conclude at the close of business on May 18, 2012, and the Assets shall be awarded to the highest bidder, effective upon cash payment to Source 1 on or before close of business on May 22, 2012. deleted per stipulation PO

4. The parties further stipulate and agree that it is in the best interests of Source 1 and its members that, during and pursuant to the Dissolution, the overhead and other expenses of Source 1 be reduced to the absolute minimum necessary to complete the Dissolution, including without limitation the processing of the Existing Purchase Orders and the sale of the Assets, in order to maximize the return and final distribution of funds to all Source 1 members. Defendant Hodge will generate a proposed budget for the completion of the Dissolution and circulate it to all the parties as soon as possible. Defendant Hodge will identify those persons

necessary to complete the processing of the Existing Purchase Orders with the understanding and purpose of reducing the overhead and expense to the absolute minimum necessary to complete the Dissolution.

5. All funds, amounts, credits, offsets and other monies properly paid to, payable or accrued to or actually received by Source 1, including without limitation in connection with the Dissolution, processing of the Existing Purchase Orders, the sale of the Assets or otherwise, shall be deposited in the Source 1 operating account no. 0102010790 at Syringa Bank in Boise, Idaho (the "Dissolution Account"). Once the Dissolution is complete with the receipt and collection of the funds for the open auction of the Assets and processing of the Existing Purchase Orders, Defendant Hodge will provide to all parties a full and complete accounting reflecting the monies received and the expenses paid during the Dissolution process. The parties acknowledge and agree that Defendant Hodge has already provided to all parties a number of business records for the first quarter of 2012, including but not limited to Customer Lists, Existing Purchase Orders for domestic and international projects, Inventory List of Company Assets, and other business records No checks shall be written on and no funds shall be withdrawn from the Dissolution Account; provided, however, that bona fide and legitimate costs and expenses of Source 1 arising from the Dissolution and consistent with the parameters set forth in paragraphs 1 and 4 may be paid from the Dissolution Account. In addition, 2011 profits in the amount of $65,000.00 may be distributed to all Members of Source 1, but no other distributions, including profits from processing of the Open Purchase Orders, shall be made until this litigation is complete, the parties all agree or as otherwise ordered by the Court.

6. The parties have stipulated and agreed that both Prehn and Hodge have been and are currently bound by their respective Non-Compete Agreements, as attached as

Exhibit B to the Affidavit of Donnelly Prehn in Support of Application for Temporary Restraining Order, dated and filed with the Court in this matter on May 3, 2012. Accordingly, Prehn and Hodge shall continue to be bound by and comply with such Non-Compete Agreements, according to their terms and conditions, until May 18, 2012, at which time each party, including Prehn and Hodge, shall be released from all future obligation to comply with such agreements not to compete and released from all obligations of confidentiality to or in connection with Source 1.

7. Each party shall have full, complete, open and immediate access to all of the books and records of Source 1. Plaintiffs shall specifically request, through their counsel, the books and records they wish to review.

8. No party shall divert, employ or otherwise use any Source 1 asset, including without limitation the Assets or Source 1 employees, to or for the benefit of Source 2 or any other person or entity.

9. The parties stipulate and agree that certain disputes among the parties remain, including without limitation as to those matters set forth in the First Claim for Relief in the First Amended Complaint, dated and filed with the Court in this matter on April 27, 2012. Accordingly, nothing contained herein or in the parties' stipulation shall be deemed to have waived any such claims or any other claims of the parties, whether set forth in such First Amended Complaint, in any Counterclaim or in any Cross Claim.

10. This Order shall be binding on each of the parties to this litigation, including without limitation Source 1 and Source 2.

DATED this 17 day of May, 2012.

By Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of May, 2012, I caused a true and correct copy of the foregoing **ORDER RE: DISSOLUTION OF THE SOURCE STORE, LLC AND RELATED MATTERS** to be served by the method indicated below, and addressed to the following:

Michael O. Roe
Matthew J. McGee
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
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Boise, Idaho 83701
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DAVISION COPPLE COPPLE & COPPLE
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Deputy Clerk

Judy Geier

From: Mike Hodge [mhodge@thesourcestore.com]
Sent: Thursday, January 17, 2013 8:41 AM
To: Judy Geier
Subject: FW: questions regarding accounts

Mike Hodge
CEO / Founder

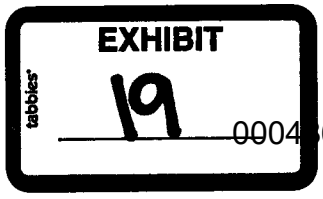
The Source LLC
3637 N. Lake Harbor Lane
Boise, Idaho 83703
o - 208.368.0520 ext. 210
toll free - 1.800.610.2820
f - 208.361.0177
mhodge@thesourcestore.com

From: Lyle Cook [mailto:lcook@syringabank.com]
Sent: Wednesday, December 05, 2012 2:57 PM
To: Mike Hodge
Subject: questions regarding accounts

Mike,
We need to close The Source Store, LLC accounts before 12/31/12 as this entity no longer exists. Can you have Jade move the merchant services and all payments to The Source LLC asap?

And you never did fund The Source LLC savings account. You do still want that account, right?

Lyle Cook
Vice President
Syringa Bank
3172 E. State St. Eagle, Id. 83616
Cell: 208-989-7930
Office: 208-947-9379
Fax: 208-938-4556



Jed W. Manwaring ISB #3040
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jgeier@evanskeane.com

Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **AFFIDAVIT OF JANAE YOUNG**
And cross claims and counterclaims.	

STATE OF IDAHO)
) ss.
County of Ada)

JANAE YOUNG, being first duly sworn upon oath, deposes and states as follows:

1. I was hired on December 12, 2012, to prepare the final wind up accounting for the The Source Store, LLC (interchangeably "Source I" or the "Company") and to remain as an

employee of the The Source, LLC, after Source I's wind up is completed. In that regard, I have personal knowledge of the facts stated herein.

2. My background as a book-keeper includes over eight years of experience, four of which have been in a departmental leadership role. I have a degree in Accountantcy and Finance from Boise State University and I am currently studying to become a certified public accountant.

3. My understanding is that the previous book-keeper abruptly quit her position with the Company approximately five days before I was hired.

4. At the direction of management, legal council, and accounting consultants, I attempted to reconcile the general ledger for Source I. This included verifying all asset and liability balances, verifying payroll records (including net pay and payroll liabilities), and reconciling cash accounts for Source I. In the process of ensuring that cash accounts were reconciled for the entire year, I discovered several reports that I provided to legal counsel (Bank Reconciliation Final Report, Cleared Checks Report, Outstanding Checks Report, and Deposit Report). I also processed payroll amounts for Source I related payroll in December and January, managed accounts payable, paid vendors, and provided management with any requested reporting.

5. From the beginning of my employment, I found inconsistencies in prior posting and a complete failure to reconcile bank statements with the entries that were posted in ProfitMaker. I was unable to reconcile the various ledgers and was assisted by Mike Hafen from Richter, Stuart & Todeschi, P.A. I also contacted the technical services section of ASI for assistance.

6. With ASI's help, I was able to locate in ProfitMaker where the following ledgers were generated: a) the G/L Cleared Checks Report; b) the G/L Deposit Report; c) G/L Outstanding Checks Report, and d) G/L Bank Reconciliation Final Report (collectively referred to as the "Reconciliation Ledgers").

7. Once these Reconciliation Ledgers were located, I was able to review passed transactions and postings in ProfitMaker and compare those transactions and postings with the cash-in cash-out activity revealed on the Company's bank statements. I reviewed the bank reconciliation reports and bank statements for December 2011 through August 2012. When I found that these reports were accurate, I did not proceed with reviewing each individual transaction. When I reviewed reports and bank statements for September 2012 and October 2012, I found many inconsistencies and proceeded to review all transactions for those months. When I started my review, there were no reports available for November 2012 through January 2013, so I reviewed all transactions, made any necessary changes, and processed reports for those months. I was able to determine that the ReconciliationLedgers had not been reconciled since August.

8. From reviewing the prior postings, I was able to determine that the previous book-keeper had attempted a forced reconciliation in October in the ProfitMaker system. Once this was done, ProfitMaker locked its records as reconciled up to that point. New reconciliations could only occur in the ProfitMaker system from that point forward.

9. Unfortunately, I found errors in bank transactions for September and in postings to various ledgers in ProfitMaker during that same month. Because of the forced reconciliation in October, I could not correct in ProfitMaker the errors in September that I found. I created a Bank Reconciliation Report for September 2012 to show how the errors were corrected and to show that the general ledger matched the bank documents.

10. From that Bank Reconciliation Report, I was able to correct errors that had occurred in October entries and ultimately reconcile the bank statement for that month with ProfitMaker. From that point forward, I was able to reconcile ProfitMaker with the bank statements from the remaining

months and finalize Source I's wind up accounting. I have provided my working file to Source I's attorney who I understand is disclosing to the parties in this litigation.

11. During my review of the Company's records, I was able to determine that the records were accurate from January 2012 through August 2012, but from September through November multiple errors were made.

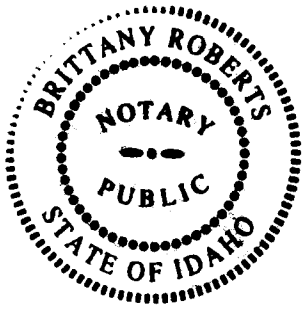
12. A majority of the errors were caused by using cash receipts, journal entries, and vendor checkwriting to try and force the general ledger to reflect a certain balance. These transactions had no factual basis and were reversed. Several other errors were made when transactions for The Source LLC were booked to Source I, or vice versa. I determined the balance due between the two entities and transferred approximately $2,600 from The Source LLC to Source I in order to clear this balance.

13. These errors have been corrected. The financial records for Source I now accurately reflect the transactions that took place during 2012.

DATED this 17th day of January, 2013.

Janae Young

SUBSCRIBED AND SWORN to before me this 17th day of January, 2013.

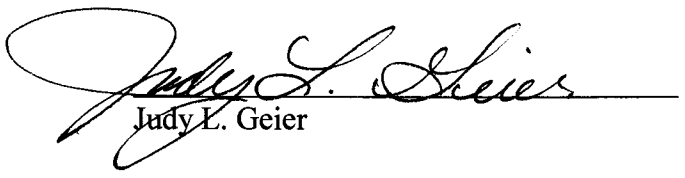


Notary Public for Idaho
Residing at Kuna, Idaho
My Commission Expires: 07/01/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2013, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Michael O. Roe MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 101 S. Capitol Blvd., 10th Fl P.O. Box 829 Boise, ID 83701 *Attorneys for Plaintiffs*	[ ] U.S. Mail [ ] Fax [ ] Overnight Delivery [X] Hand Delivery
Edward J. Guerricabeitia DAVISON COPPLE COPPLE & COPPLE, LLC P.O. Box 1583 Boise, ID 83701-1583 *Attorneys for Defendant Michael L. Hodge II and The Source, LLC*	[X] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Charles C. Crafts CRAFTS LAW INC. 7363 Barrister Boise, ID 83704 *Attorney for Defendant George M. Brown*	[X] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery
Brian L. Boyle 903 E. Winding Creek Dr., Ste. 150 Eagle, ID 83616 *Attorney for Defendant Christopher Claiborne*	[X] U.S. Mail [ ] Fax [ ] Overnight Delivery [ ] Hand Delivery



Judy L. Geier

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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **REPORT OF WIND UP**
And cross claims and counterclaims.	

Pursuant to the parties' stipulation and the Court's subsequent order issued thereon and entered on May 17, 2012, The Source Store, LLC ("Source I"), submits this Report of Wind Up ("Report") documenting the closing of its accounting books and records. This Report is supported by the Affidavits of Michael L. Hodge and of Janae Young filed concurrently herewith as well as the documents disclosed to the parties concurrently herewith and disclosed throughout the course of this judicial dissolution.

Attached hereto as Exhibit 20 are the Balance Sheet, Profit and Loss Statement, and G/L Trial Balance-Balance Sheet for Source I for the month of December 2012 (Bates Nos. Source I 5172 -5187), and as Exhibit 21 are the Balance Sheet, Profit and Loss Statement, and G/L Trial Balance-Balance Sheet for Source I for the month of January 2013 (Bates Nos. Source I 5188- 5203). The final cash balance of $20,547.86, as reflected on the January 2013 Balance Sheet, is subject to ongoing litigation costs and fees to defend in this matter.

Source I's appointed liquidator has declined to pursue a collection action to recover a disputed account receivable which dates back to November 2012, and further declines to prosecute the claims asserted in Plaintiffs' Second Amended Complaint filed July 2, 2012, which were asserted as claims belonging to Source I.

DATED this 17th day of January, 2013.

EVANS KEANE, LLP

Judy L. Geier, Of the Firm
Attorneys for The Source Store, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of January, 2013, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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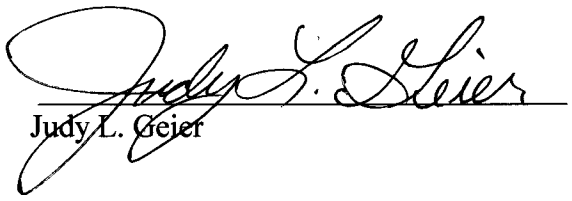

Judy L. Geier

The Source Store LLC

Balance Sheet

Date: 01/15/13
Time: 16:20:59

December, 2012

Oper: JA

G/L #	Name	YTD balance	Prev YTD
	Assets		
100	Syringa Bank checking	59,386.93	263,402.48
107	CHASE Checking Account	0.00	0.00
110	Syringa Bank 9567	0.00	0.00
104	Petty Cash	0.00	1,161.45
108	Savings Account-$ Market	0.00	0.00
109	Hodge Legal Retainer	0.00	0.00
102	ProBarter Exchange	0.00	0.00
112	Investments	0.00	0.00
	Total Cash	**59,386.93**	**264,563.93**
116	Accounts Receivable	1,029.10	354,415.56
117	Notes Receivable	0.00	0.00
115	ProBarter Receivable	0.00	0.00
124	Finance Charge Receivable	0.00	0.00
125	Miscellaneous Receivables	0.00	0.00
	Net Accounts Receivable	**1,029.10**	**354,415.56**
134	MCW Inv Deposit	0.00	0.00
135	Drop Ship Merchandise	0.00	280,949.48
136	Inventory	0.00	10,558.87
137	Customer inventory	0.00	0.00
237	Reserve customer invent	0.00	0.00
138	Shipped inventory	0.00	0.00
133	Inventory Donations	0.00	0.00
287	QB Inventory Clearing	0.00	0.00
139	BSU Blank apparel	0.00	11,640.06
	Total Inventory	**0.00**	**303,148.41**
128	Commission Adv or Loans	0.00	0.00
132	Advance on Purchases	0.00	0.00
140	Prepaid Commissions	0.00	0.00
144	Prepaid Expenses	0.00	0.00
149	Clearing Commission	0.00	0.00
	Total Prepaid Expenses	**0.00**	**0.00**
	Total Current Assets	**60,416.03**	**922,127.90**
160	Office Furniture & Equip	0.00	137,041.01
161	Allow for Deprec F & E	0.00	0.00
166	Shaker Moulds	0.00	43,440.00
167	1998 Windstar Van	0.00	0.00
168	1998 Ford Truck	0.00	0.00

EXHIBIT
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The Source Store LLC

Balance Sheet

December, 2012

G/L #	Name	YTD balance	Prev YTD
170	NISSAN Truck HODGE	0.00	36,654.27
169	Allow for Depreciation	0.00	-194,724.00
181	Allow for Amortization	0.00	-45,671.00
176	Land	0.00	0.00
180	Building	0.00	0.00
188	Leasehold Improvements	0.00	0.00
189	Allow for Amort Lease Imp	0.00	0.00
190	Goodwill	0.00	88,395.52
	Total Fixed Assets	**0.00**	**65,135.80**
150	Cash Surrender Value Life	0.00	0.00
154	Deposits	0.00	0.00
158	Organization Costs	0.00	0.00
	Total Other Assets	**0.00**	**0.00**
	Total Assets	**60,416.03**	**987,263.70**
	Liab. and Stock. Equity		
	Liabilities		
200	Notes Payable	0.00	0.00
204	Accounts Payable	30,706.37	230,036.98
205	A/P clearing	0.00	0.00
208	Accrued Wages & Salaries	0.00	0.00
212	Accrued Commissions Pay	0.00	0.00
215	Accrued Comm Reserve	0.00	0.00
216	Salesman's Reserve Pay	0.00	0.00
219	UI payroll liabilities	0.00	0.00
220	FICA/SS W/H Taxes	0.00	0.00
221	FICA/Medicare W/H Tax	0.00	0.00
222	Federal W/H Taxes	0.00	0.00
224	State W/H Taxes	0.00	0.00
225	Emplr PR Tax Liabilities	0.00	0.00
228	Sales Tax Payable	0.00	0.00
230	Sales Tax reimbursement	0.00	0.00
232	Interest Payable	0.00	0.00
234	MCW Inv-deposit	0.00	0.00
235	Deferred Income Fin Chg	0.00	0.00
238	Suspense Account	0.00	0.00
240	Accrued Expenses	0.00	0.00
244	Customer Deposits	0.00	236,968.02
245	Cash/Credit Card Deposits	0.00	0.00
265	LOAN-Prehn	0.00	0.00
269	Receivable Loan	0.00	0.00
268	Syringa Bank Emb. 802	0.00	0.00
909	MasterCard 9058 Office	0.00	252.24

The Source Store LLC
Balance Sheet
December, 2012

G/L #	Name	YTD balance	Prev YTD
911	MasterCard 8906 Hodge	0.00	5,471.27
914	MasterCard 1140 Brown	0.00	3,486.97
910	MasterCard 9390 Don	0.00	372.21
917	MasterCard 0933 Blair	0.00	13,021.21
918	MasterCard 3358 CAMMAS	0.00	606.39
248	Income Taxes Reserve	0.00	0.00
	Total Current Liabilities	**30,706.37**	**490,215.29**
260	LOAN Don	0.00	0.00
261	LOAN HODGE	0.00	0.00
262	Dell-Financial 002	0.00	0.00
263	Dell Financial 001	0.00	0.00
264	Lise Beauchemin-GrantLOAN	0.00	0.00
266	Syringa Bank F150	0.00	0.00
283	Nissan Loan 115740807	0.00	21,766.60
267	Syringa Bank Emb 803	0.00	0.00
281	Syringa Bank Emb. 804	0.00	0.00
282	Syringa Bank Loan 806	0.00	0.00
288	QB GL clearing	0.00	0.00
289	Deferred Income	0.00	0.00
	Total Long Term Debt	**0.00**	**21,766.60**
	Total Liabilities	**30,706.37**	**511,981.89**
	Stockholder's Equity		
270	Owner's Capital, Dwight B	246,914.19	237,093.84
271	Owner's Capital, Chris	157,814.45	153,841.66
272	Owner's Capital, Don Preh	-132,541.31	-153,811.55
273	Owner's Capital, Mike Hod	-244,108.69	-270,097.54
275	Owner's Capital, M.Brown	2,251.75	-1,361.06
274	Owner's Draw	0.00	0.00
280	Paid-In Surplus	0.00	0.00
285	Clearing Account	0.00	0.00
290	Retained Earnings	0.00	229,640.29
	Current YTD Profit	**-620.73**	**279,976.17**
	Total Stockholders Equity	**29,709.66**	**475,281.81**
	Total Liab. and Equity	**60,416.03**	**987,263.70**

The Source Store LLC

Profit & Loss Statement

December, 2012

Date: 01/15/13
Time: 16:30:26

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
300	Sales-Dropship	0.00	0.00	1,608,088.05	99.97
301	Sales-Inventory	0.00	0.00	820.00	0.05
309	Sales-Art	0.00	0.00	0.00	0.00
310	Freight Billed	0.00	0.00	46,304.29	2.88
302	Trade Discounts Allowed	0.00	0.00	-69,442.39	-4.32
303	Service Sales	0.00	0.00	0.00	0.00
304	ATEC Empl Sales/ Rebate	0.00	0.00	0.00	0.00
305	Sales Ret and Allowances	0.00	0.00	22,800.00	1.42
306	Cash Short or Over	0.00	0.00	0.20	0.00
307	ATEC Fulfillment Sales	0.00	0.00	0.00	0.00
308	MCW Fulfillment Sales	0.00	0.00	0.00	0.00
600	Cash Discounts	0.00	0.00	0.00	0.00
	Net Sales	**0.00**	**0.00**	**1,608,570.15**	**100.00**
400	Cost of Sales-Drop Shipmt	0.00	0.00	888,190.12	55.22
401	Cost of Sales-Inv Items	0.00	0.00	327.18	0.02
402	Inventory adjustments	0.00	0.00	0.00	0.00
403	Inventory variance	0.00	0.00	0.00	0.00
404	Purchases-Before Computer	0.00	0.00	0.00	0.00
405	Purch Returns and Allow	0.00	0.00	0.00	0.00
409	cost of shipping orders	0.00	0.00	0.00	0.00
408	Source Delivery	0.00	0.00	0.00	0.00
410	Freight Paid on Purchases	0.00	0.00	129,861.84	8.07
412	Fullfillment costs	0.00	0.00	0.00	0.00
422	ATEC Prog Sales Reserve	0.00	0.00	0.00	0.00
423	ATEC Prog Sales Cost	0.00	0.00	0.00	0.00
432	ATEC Fulfillment Reserve	0.00	0.00	0.00	0.00
433	ATEC Fulfillment Cost	0.00	0.00	0.00	0.00
442	MCW Fulfillment Reserve	0.00	0.00	0.00	0.00
443	MCW Fulfillment Cost	0.00	0.00	0.00	0.00
452	Production Cost Reserve	0.00	0.00	0.00	0.00
453	Production Cost Recovery	0.00	0.00	0.00	0.00
953	Production Supplies	0.00	0.00	0.00	0.00
955	Supplies for Ship/inv	0.00	0.00	54.86	0.00

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The Source Store LLC
Profit & Loss Statement
December, 2012

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
950	Emb. Supplies & Expense	0.00	0.00	517.03	0.03
902	Graphic Art expense	0.00	0.00	1,851.60	0.12
806	Lease Embroidery Machine	0.00	0.00	0.00	0.00
977	CLC Royalty Fees	0.00	0.00	0.00	0.00
312	Insurance Chgd Customer	0.00	0.00	0.00	0.00
	Total Cost of Sales	**0.00**	**0.00**	**1,020,802.63**	**63.46**
	Gross Profit	**0.00**	**0.00**	**587,767.52**	**36.54**
700	Comm Exp/Salary Sales Per	0.00	0.00	2,685.65	0.17
705	Comm Exp/Sal Off Rel Sale	0.00	0.00	0.00	0.00
710	Bonus - Sales	0.00	0.00	0.00	0.00
946	ASI Promoshops	0.00	0.00	942.22	0.06
800	Advertising & Promotion	0.00	0.00	1,102.69	0.07
808	Samples and Catalogs	0.00	0.00	2,284.37	0.14
812	Business Promo (Entertai)	0.00	0.00	5,941.90	0.37
815	Travel (meals & Entertai)	0.00	0.00	10,006.69	0.62
816	Travel	0.00	0.00	24,879.90	1.55
817	China Employee Travel	0.00	0.00	5,720.45	0.36
820	Sales Training	0.00	0.00	0.00	0.00
824	Misc Selling Expense	0.00	0.00	0.00	0.00
	Total Selling Expenses	**0.00**	**0.00**	**53,563.87**	**3.33**
900	Office Wages & Salaries	382.88	0.00	161,076.51	10.01
901	Overtime wages	0.00	0.00	0.00	0.00
903	Garnished Wages	0.00	0.00	0.00	0.00
904	Officer's Salary & Bonus	0.00	0.00	0.00	0.00
905	Guaranted Paym MH	10,000.00	0.00	123,510.07	7.68
915	Guaranted Paym DP	0.00	0.00	0.00	0.00
925	Guaranteed Pmts–BROWN	0.00	0.00	0.00	0.00
945	Guaranteed Pmts–DWIGHT	0.00	0.00	0.00	0.00
935	Guaranteed Pmts–WOODY	0.00	0.00	0.00	0.00
801	Auto Fuel	0.00	0.00	6,718.99	0.42

The Source Store LLC

Profit & Loss Statement

December, 2012

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
802	Auto Repairs/Maintenance	0.00	0.00	107.92	0.01
803	Auto Payments	0.00	0.00	3,272.49	0.20
804	Misc. Auto Expense	0.00	0.00	0.00	0.00
805	Lease Honda Pilot	0.00	0.00	0.00	0.00
807	Lease Dell Server	0.00	0.00	0.00	0.00
907	Property Taxes Payable	0.00	0.00	0.00	0.00
906	UI Tax Expense	0.00	0.00	0.00	0.00
908	Payroll Taxes	42.62	0.00	19,076.41	1.19
912	Insurance - Employees	0.00	0.00	24,954.84	1.55
913	Workers Comp. Insurance	0.00	0.00	1,185.00	0.07
916	Pension/Profit Shar Contr	0.00	0.00	0.00	0.00
920	Officer's Life Insurance	0.00	0.00	0.00	0.00
924	Rent	0.00	0.00	32,421.65	2.02
928	Utilities	0.00	0.00	4,668.03	0.29
932	Insurance - General	0.00	0.00	0.00	0.00
933	Insurance liability/build	0.00	0.00	0.00	0.00
936	Property Taxes & Licenses	0.00	0.00	5,070.00	0.32
940	Depreciation/Amortization	0.00	0.00	0.00	0.00
941	Amortization Expense	0.00	0.00	0.00	0.00
944	Repairs & Maintenance	0.00	0.00	6,515.80	0.41
948	Telephone/Cell Phones	0.00	0.00	9,173.16	0.57
949	IT Expense	0.00	0.00	11,261.94	0.70
947	Computer Software	0.00	0.00	553.89	0.03
975	ASICS support	0.00	0.00	3,416.38	0.21
952	Office Supplies & Expense	0.00	0.00	4,488.21	0.28
411	Shipping expense	0.00	0.00	158.63	0.01
954	Waste-Damaged goods	0.00	0.00	0.00	0.00
956	Equipment Rental	0.00	0.00	0.00	0.00
960	Data Processing	0.00	0.00	0.00	0.00
961	Consulting Fees	0.00	0.00	30,750.00	1.91
964	Legal & Accounting	20,038.93	0.00	61,912.84	3.85
966	Bank Service Charges	37.50	0.00	981.08	0.06
967	Merchant Services	0.00	0.00	3,681.68	0.23
968	Bad Debts - Net	26,101.23	0.00	26,101.23	1.62
972	Postage	0.00	0.00	91.25	0.01

The Source Store LLC
Profit & Loss Statement
December, 2012

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
976	Dues & Subscriptions	0.00	0.00	3,949.00	0.25
980	Contributions	0.00	0.00	0.00	0.00
984	Miscellaneous	-26,101.23	0.00	0.00	0.00
	Total Gen. & Adm. Expense	**30,501.93**	**0.00**	**545,097.00**	**33.89**
	Total Operating Expense	**30,501.93**	**0.00**	**598,660.87**	**37.22**
	Net Operating Profit	**-30,501.93**	**0.00**	**-10,893.35**	**-0.68**
239	Gain/Loss on Equipment	0.00	0.00	-9,238.09	-0.57
500	Cash Discounts Earned	0.00	0.00	645.62	0.04
502	Interest Income	0.00	0.00	562.51	0.04
503	Finance Charge Income	0.00	0.00	0.00	0.00
504	Volume Rebate	0.00	0.00	0.00	0.00
506	Sample Rebate	0.00	0.00	0.00	0.00
508	Commission Income	0.00	0.00	0.00	0.00
510	Miscellaneous Income	338.04	0.00	338.04	0.02
	Total Other Income	**338.04**	**0.00**	**10,784.26**	**0.67**
605	Interest Expense	0.00	0.00	499.26	0.03
606	Lise Beauchemin-Grant Int	0.00	0.00	0.00	0.00
607	Finance Charges	0.00	0.00	12.38	0.00
610	Income Taxes	0.00	0.00	0.00	0.00
650	Other Expense	0.00	0.00	0.00	0.00
	Total Other Expense	**0.00**	**0.00**	**511.64**	**0.03**
	Total Other Income-Net	**338.04**	**0.00**	**10,272.62**	**0.64**
	Total Operating Profit	**-30,163.89**	**0.00**	**-620.73**	**-0.04**

SOURCE I 5178

The Source Store LLC

Trial Balance - Balance Sheet

December, 2012

Date: 01/17/13
Time: 10:00:57

Oper: JA

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
100	Syringa Bank checking	13,094.45		46,292.48		59,386.93	
102	ProBarter Exchange	0.00		0.00		0.00	
104	Petty Cash	0.00		0.00		0.00	
107	CHASE Checking Account	0.00		0.00		0.00	
108	Savings Account-$ Market	0.00		0.00		0.00	
109	Hodge Legal Retainer	0.00		0.00		0.00	
110	Syringa Bank 9567	0.00		0.00		0.00	
112	Investments	0.00		0.00		0.00	
115	ProBarter Receivable	0.00		0.00		0.00	
116	Accounts Receivable	1,029.10		0.00		1,029.10	
117	Notes Receivable	0.00		0.00		0.00	
124	Finance Charge Receivable	0.00		0.00		0.00	
125	Miscellaneous Receivables	0.00		0.00		0.00	
128	Commission Adv or Loans	0.00		0.00		0.00	
132	Advance on Purchases	0.00		0.00		0.00	
133	Inventory Donations	0.00		0.00		0.00	
134	MCW Inv Deposit	0.00		0.00		0.00	
135	Drop Ship Merchandise	0.00		0.00		0.00	
136	Inventory	0.00		0.00		0.00	
137	Customer inventory	0.00		0.00		0.00	
138	Shipped inventory	0.00		0.00		0.00	
139	BSU Blank apparel	0.00		0.00		0.00	
140	Prepaid Commissions	0.00		0.00		0.00	
144	Prepaid Expenses	0.00		0.00		0.00	
149	Clearing Commission	0.00		0.00		0.00	
150	Cash Surrender Value Life	0.00		0.00		0.00	
154	Deposits	0.00		0.00		0.00	
158	Organization Costs	0.00		0.00		0.00	
160	Office Furniture & Equip	0.00		0.00		0.00	
161	Allow for Deprec F & E	0.00		0.00		0.00	
166	Shaker Moulds	0.00		0.00		0.00	

SOURCE I 5179

The Source Store LLC
Trial Balance - Balance Sheet
December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
167	1998 Windstar Van	0.00		0.00		0.00	
168	1998 Ford Truck	0.00		0.00		0.00	
169	Allow for Depreciation	0.00		0.00		0.00	
170	NISSAN Truck HODGE	0.00		0.00		0.00	
176	Land	0.00		0.00		0.00	
180	Building	0.00		0.00		0.00	
181	Allow for Amortization	0.00		0.00		0.00	
188	Leasehold Improvements	0.00		0.00		0.00	
189	Allow for Amort Lease Imp	0.00		0.00		0.00	
190	Goodwill	0.00		0.00		0.00	
200	Notes Payable	0.00		0.00		0.00	
204	Accounts Payable		13,230.00		17,476.37		30,706.37
205	A/P clearing	0.00		0.00		0.00	
208	Accrued Wages & Salaries	0.00		0.00		0.00	
212	Accrued Commissions Pay	0.00		0.00		0.00	
215	Accrued Comm Reserve	0.00		0.00		0.00	
216	Salesman's Reserve Pay	0.00		0.00		0.00	
219	UI payroll liabilities	0.00		0.00		0.00	
220	FICA/SS W/H Taxes	0.00		0.00		0.00	
221	FICA/Medicare W/H Tax	0.00		0.00		0.00	
222	Federal W/H Taxes	0.00		0.00		0.00	
224	State W/H Taxes	0.00		0.00		0.00	
225	Emplr PR Tax Liabilities	0.00		0.00		0.00	
228	Sales Tax Payable	0.00		0.00		0.00	
230	Sales Tax reimbursement	0.00		0.00		0.00	
232	Interest Payable	0.00		0.00		0.00	
234	MCW Inv-deposit	0.00		0.00		0.00	
235	Deferred Income Fin Chg	0.00		0.00		0.00	
237	Reserve customer invent	0.00		0.00		0.00	
238	Suspense Account	58,980.00			58,980.00	0.00	
240	Accrued Expenses	0.00		0.00		0.00	

SOURCE I 5180

The Source Store LLC
Trial Balance - Balance Sheet
December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
244	Customer Deposits	0.00		0.00		0.00	
245	Cash/Credit Card Deposits	0.00		0.00		0.00	
248	Income Taxes Reserve	0.00		0.00		0.00	
260	LOAN Don	0.00		0.00		0.00	
261	LOAN HODGE	0.00		0.00		0.00	
262	Dell-Financial 002	0.00		0.00		0.00	
263	Dell Financial 001	0.00		0.00		0.00	
264	Lise Beauchemin-GrantLOAN	0.00		0.00		0.00	
265	LOAN-Prehn	0.00		0.00		0.00	
266	Syringa Bank F150	0.00		0.00		0.00	
267	Syringa Bank Emb 803	0.00		0.00		0.00	
268	Syringa Bank Emb. 802	0.00		0.00		0.00	
269	Receivable Loan	0.00		0.00		0.00	
270	Owner's Capital, Dwight B		246,914.19	0.00			246,914.19
271	Owner's Capital, Chris		157,814.45	0.00			157,814.45
272	Owner's Capital, Don Preh	132,541.31		0.00		132,541.31	
273	Owner's Capital, Mike Hod	244,108.69		0.00		244,108.69	
274	Owner's Draw	0.00		0.00		0.00	
275	Owner's Capital, M.Brown		2,251.75	0.00			2,251.75
280	Paid-In Surplus	0.00		0.00		0.00	
281	Syringa Bank Emb. 804	0.00		0.00		0.00	
282	Syringa Bank Loan 806	0.00		0.00		0.00	
283	Nissan Loan 115740807	0.00		0.00		0.00	
285	Clearing Account	0.00		0.00		0.00	
287	QB Inventory Clearing	0.00		0.00		0.00	
288	QB GL clearing	0.00		0.00		0.00	
289	Deferred Income	0.00		0.00		0.00	
290	Retained Earnings	0.00		0.00		0.00	
909	MasterCard 9058 Office	0.00		0.00		0.00	
910	MasterCard 9390 Don	0.00		0.00		0.00	
911	MasterCard 8906 Hodge	0.00		0.00		0.00	

The Source Store LLC

Trial Balance - Balance Sheet

December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
244	Customer Deposits	0.00		0.00		0.00	
245	Cash/Credit Card Deposits	0.00		0.00		0.00	
248	Income Taxes Reserve	0.00		0.00		0.00	
260	LOAN Don	0.00		0.00		0.00	
261	LOAN HODGE	0.00		0.00		0.00	
262	Dell-Financial 002	0.00		0.00		0.00	
263	Dell Financial 001	0.00		0.00		0.00	
264	Lise Beauchemin-GrantLOAN	0.00		0.00		0.00	
265	LOAN-Prehn	0.00		0.00		0.00	
266	Syringa Bank F150	0.00		0.00		0.00	
267	Syringa Bank Emb 803	0.00		0.00		0.00	
268	Syringa Bank Emb. 802	0.00		0.00		0.00	
269	Receivable Loan	0.00		0.00		0.00	
270	Owner's Capital, Dwight B		246,914.19	0.00			246,914.19
271	Owner's Capital, Chris		157,814.45	0.00			157,814.45
272	Owner's Capital, Don Preh	132,541.31		0.00		132,541.31	
273	Owner's Capital, Mike Hod	244,108.69		0.00		244,108.69	
274	Owner's Draw	0.00		0.00		0.00	
275	Owner's Capital, M.Brown		2,251.75	0.00			2,251.75
280	Paid-In Surplus	0.00		0.00		0.00	
281	Syringa Bank Emb. 804	0.00		0.00		0.00	
282	Syringa Bank Loan 806	0.00		0.00		0.00	
283	Nissan Loan 115740807	0.00		0.00		0.00	
285	Clearing Account	0.00		0.00		0.00	
287	QB Inventory Clearing	0.00		0.00		0.00	
288	QB GL clearing	0.00		0.00		0.00	
289	Deferred Income	0.00		0.00		0.00	
290	Retained Earnings	0.00		0.00		0.00	
909	MasterCard 9058 Office	0.00		0.00		0.00	
910	MasterCard 9390 Don	0.00		0.00		0.00	
911	MasterCard 8906 Hodge	0.00		0.00		0.00	

The Source Store LLC
Trial Balance - Balance Sheet
December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
914	MasterCard 1140 Brown	0.00		0.00		0.00	
917	MasterCard 0933 Blair	0.00		0.00		0.00	
918	MasterCard 3358 CAMMAS	0.00		0.00		0.00	
	Totals	**449,753.55**	**420,210.39**	**46,292.48**	**76,456.37**	**437,066.03**	**437,686.76**
					YTD balance		**-620.73**

SOURCE I 5183

The Source Store LLC

Trial Balance - Profit & Loss Statement

December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
239	Gain/Loss on Equipment		9,238.09	0.00			9,238.09
300	Sales-Dropship		1,608,088.05	0.00			1,608,088.05
301	Sales-Inventory		820.00	0.00			820.00
302	Trade Discounts Allowed	69,442.39		0.00		69,442.39	
303	Service Sales	0.00		0.00		0.00	
304	ATEC Empl Sales/ Rebate	0.00		0.00		0.00	
305	Sales Ret and Allowances		22,800.00	0.00			22,800.00
306	Cash Short or Over		0.20	0.00			0.20
307	ATEC Fulfillment Sales	0.00		0.00		0.00	
308	MCW Fulfillment Sales	0.00		0.00		0.00	
309	Sales-Art	0.00		0.00		0.00	
310	Freight Billed		46,304.29	0.00			46,304.29
312	Insurance Chgd Customer	0.00		0.00		0.00	
400	Cost of Sales-Drop Shipmt	888,190.12		0.00		888,190.12	
401	Cost of Sales-Inv Items	327.18		0.00		327.18	
402	Inventory adjustments	0.00		0.00		0.00	
403	Inventory variance	0.00		0.00		0.00	
404	Purchases-Before Computer	0.00		0.00		0.00	
405	Purch Returns and Allow	0.00		0.00		0.00	
408	Source Delivery	0.00		0.00		0.00	
409	cost of shipping orders	0.00		0.00		0.00	
410	Freight Paid on Purchases	129,861.84		0.00		129,861.84	
411	Shipping expense	158.63		0.00		158.63	
412	Fullfillment costs	0.00		0.00		0.00	
422	ATEC Prog Sales Reserve	0.00		0.00		0.00	
423	ATEC Prog Sales Cost	0.00		0.00		0.00	
432	ATEC Fulfillment Reserve	0.00		0.00		0.00	
433	ATEC Fulfillment Cost	0.00		0.00		0.00	
442	MCW Fulfillment Reserve	0.00		0.00		0.00	

The Source Store LLC

Trial Balance - Profit & Loss Statement

December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
443	MCW Fulfillment Cost	0.00		0.00		0.00	
452	Production Cost Reserve	0.00		0.00		0.00	
453	Production Cost Recovery	0.00		0.00		0.00	
500	Cash Discounts Earned		645.62	0.00			645.62
502	Interest Income		562.51	0.00			562.51
503	Finance Charge Income	0.00		0.00		0.00	
504	Volume Rebate	0.00		0.00		0.00	
506	Sample Rebate	0.00		0.00		0.00	
508	Commission Income	0.00		0.00		0.00	
510	Miscellaneous Income	0.00			338.04		338.04
600	Cash Discounts	0.00		0.00		0.00	
605	Interest Expense	499.26		0.00		499.26	
606	Lise Beauchemin-Grant Int	0.00		0.00		0.00	
607	Finance Charges	12.38		0.00		12.38	
610	Income Taxes	0.00		0.00		0.00	
650	Other Expense	0.00		0.00		0.00	
700	Comm Exp/Salary Sales Per	2,685.65		0.00		2,685.65	
705	Comm Exp/Sal Off Rel Sale	0.00		0.00		0.00	
710	Bonus - Sales	0.00		0.00		0.00	
800	Advertising & Promotion	1,102.69		0.00		1,102.69	
801	Auto Fuel	6,718.99		0.00		6,718.99	
802	Auto Repairs/Maintenance	107.92		0.00		107.92	
803	Auto Payments	3,272.49		0.00		3,272.49	
804	Misc. Auto Expense	0.00		0.00		0.00	
805	Lease Honda Pilot	0.00		0.00		0.00	
806	Lease Embroidery Machine	0.00		0.00		0.00	
807	Lease Dell Server	0.00		0.00		0.00	
808	Samples and Catalogs	2,284.37		0.00		2,284.37	
812	Business Promo (Entertai)	5,941.90		0.00		5,941.90	

SOURCE I 5185

The Source Store LLC

Trial Balance - Profit & Loss Statement

December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
815	Travel (meals & Entertai)	10,006.69		0.00		10,006.69	
816	Travel	24,879.90		0.00		24,879.90	
817	China Employee Travel	5,720.45		0.00		5,720.45	
820	Sales Training	0.00		0.00		0.00	
824	Misc Selling Expense	0.00		0.00		0.00	
900	Office Wages & Salaries	160,693.63		382.88		161,076.51	
901	Overtime wages	0.00		0.00		0.00	
902	Graphic Art expense	1,851.60		0.00		1,851.60	
903	Garnished Wages	0.00		0.00		0.00	
904	Officer's Salary & Bonus	0.00		0.00		0.00	
905	Guaranted Paym MH	113,510.07		10,000.00		123,510.07	
906	UI Tax Expense	0.00		0.00		0.00	
907	Property Taxes Payable	0.00		0.00		0.00	
908	Payroll Taxes	19,033.79		42.62		19,076.41	
912	Insurance - Employees	24,954.84		0.00		24,954.84	
913	Workers Comp. Insurance	1,185.00		0.00		1,185.00	
915	Guaranted Paym DP	0.00		0.00		0.00	
916	Pension/Profit Shar Contr	0.00		0.00		0.00	
920	Officer's Life Insurance	0.00		0.00		0.00	
924	Rent	32,421.65		0.00		32,421.65	
925	Guaranteed Pmts--BROWN	0.00		0.00		0.00	
928	Utilities	4,668.03		0.00		4,668.03	
932	Insurance - General	0.00		0.00		0.00	
933	Insurance liability/build	0.00		0.00		0.00	
935	Guaranteed Pmts--WOODY	0.00		0.00		0.00	
936	Property Taxes & Licenses	5,070.00		0.00		5,070.00	
940	Depreciation/Amortization	0.00		0.00		0.00	
941	Amortization Expense	0.00		0.00		0.00	
944	Repairs & Maintenance	6,515.80		0.00		6,515.80	

The Source Store LLC

Trial Balance - Profit & Loss Statement

December, 2012

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
945	Guaranteed Pmts--DWIGHT	0.00		0.00		0.00	
946	ASI Promoshops	942.22		0.00		942.22	
947	Computer Software	553.89		0.00		553.89	
948	Telephone/Cell Phones	9,173.16		0.00		9,173.16	
949	IT Expense	11,261.94		0.00		11,261.94	
950	Emb. Supplies & Expense	517.03		0.00		517.03	
952	Office Supplies & Expense	4,488.21		0.00		4,488.21	
953	Production Supplies	0.00		0.00		0.00	
954	Waste-Damaged goods	0.00		0.00		0.00	
955	Supplies for Ship/inv	54.86		0.00		54.86	
956	Equipment Rental	0.00		0.00		0.00	
960	Data Processing	0.00		0.00		0.00	
961	Consulting Fees	30,750.00		0.00		30,750.00	
964	Legal & Accounting	41,873.91		20,038.93		61,912.84	
966	Bank Service Charges	943.58		37.50		981.08	
967	Merchant Services	3,681.68		0.00		3,681.68	
968	Bad Debts - Net	0.00		26,101.23		26,101.23	
972	Postage	91.25		0.00		91.25	
975	ASICS support	3,416.38		0.00		3,416.38	
976	Dues & Subscriptions	3,949.00		0.00		3,949.00	
977	CLC Royalty Fees	0.00		0.00		0.00	
980	Contributions	0.00		0.00		0.00	
984	Miscellaneous	26,101.23			26,101.23	0.00	
	Totals	**1,658,915.60**	**1,688,458.76**	**56,603.16**	**26,439.27**	**1,689,417.53**	**1,688,796.80**
						YTD balance	**620.73**
Grand totals		**2,108,669.15**	**2,108,669.15**	**102,895.64**	**102,895.64**	**2,126,483.56**	**2,126,483.56**

SOURCE I 5187

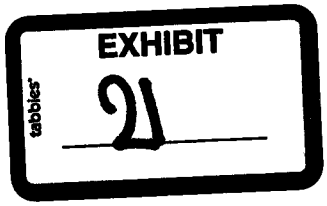
The Source Store LLC

Balance Sheet

Date: 01/15/13
Time: 16:29:12

January, 2013

G/L #	Name	YTD balance	Prev YTD
	Assets		
100	Syringa Bank checking	20,547.86	424,728.21
107	CHASE Checking Account	0.00	0.00
110	Syringa Bank 9567	0.00	0.00
104	Petty Cash	0.00	1,161.45
108	Savings Account-$ Market	0.00	0.00
109	Hodge Legal Retainer	0.00	0.00
102	ProBarter Exchange	0.00	0.00
112	Investments	0.00	0.00
	Total Cash	**20,547.86**	**425,889.66**
116	Accounts Receivable	1,029.10	174,387.25
117	Notes Receivable	0.00	0.00
115	ProBarter Receivable	0.00	0.00
124	Finance Charge Receivable	0.00	0.00
125	Miscellaneous Receivables	0.00	0.00
	Net Accounts Receivable	**1,029.10**	**174,387.25**
134	MCW Inv Deposit	0.00	0.00
135	Drop Ship Merchandise	0.00	221,116.22
136	Inventory	0.00	10,369.87
137	Customer inventory	0.00	0.00
237	Reserve customer invent	0.00	0.00
138	Shipped inventory	0.00	0.00
133	Inventory Donations	0.00	0.00
287	QB Inventory Clearing	0.00	0.00
139	BSU Blank apparel	0.00	11,640.06
	Total Inventory	**0.00**	**243,126.15**
128	Commission Adv or Loans	0.00	0.00
132	Advance on Purchases	0.00	0.00
140	Prepaid Commissions	0.00	0.00
144	Prepaid Expenses	0.00	0.00
149	Clearing Commission	0.00	0.00
	Total Prepaid Expenses	**0.00**	**0.00**
	Total Current Assets	**21,576.96**	**843,403.06**
160	Office Furniture & Equip	0.00	137,751.19
161	Allow for Deprec F & E	0.00	0.00
166	Shaker Moulds	0.00	43,440.00
167	1998 Windstar Van	0.00	0.00
168	1998 Ford Truck	0.00	0.00



The Source Store LLC
Balance Sheet
January, 2013

G/L #	Name	YTD balance	Prev YTD
170	NISSAN Truck HODGE	0.00	36,654.27
169	Allow for Depreciation	0.00	-207,969.00
181	Allow for Amortization	0.00	-51,564.00
176	Land	0.00	0.00
180	Building	0.00	0.00
188	Leasehold Improvements	0.00	0.00
189	Allow for Amort Lease Imp	0.00	0.00
190	Goodwill	0.00	88,395.52
	Total Fixed Assets	**0.00**	**46,707.98**
150	Cash Surrender Value Life	0.00	0.00
154	Deposits	0.00	0.00
158	Organization Costs	0.00	0.00
	Total Other Assets	**0.00**	**0.00**
	Total Assets	**21,576.96**	**890,111.04**
	Liab. and Stock. Equity		
	Liabilities		
200	Notes Payable	0.00	0.00
204	Accounts Payable	0.00	100,619.29
205	A/P clearing	0.00	0.00
208	Accrued Wages & Salaries	0.00	0.00
212	Accrued Commissions Pay	0.00	40.75
215	Accrued Comm Reserve	0.00	0.00
216	Salesman's Reserve Pay	0.00	0.00
219	UI payroll liabilities	0.00	937.92
220	FICA/SS W/H Taxes	0.00	2,802.92
221	FICA/Medicare W/H Tax	0.00	781.56
222	Federal W/H Taxes	0.00	2,265.46
224	State W/H Taxes	0.00	1,070.55
225	Emplr PR Tax Liabilities	0.00	0.00
228	Sales Tax Payable	0.00	7.30
230	Sales Tax reimbursement	0.00	0.00
232	Interest Payable	0.00	0.00
234	MCW Inv-deposit	0.00	0.00
235	Deferred Income Fin Chg	0.00	0.00
238	Suspense Account	0.00	0.00
240	Accrued Expenses	0.00	0.00
244	Customer Deposits	0.00	274,179.74
245	Cash/Credit Card Deposits	0.00	0.00
265	LOAN-Prehn	0.00	0.00
269	Receivable Loan	0.00	0.00
268	Syringa Bank Emb. 802	0.00	0.00
909	MasterCard 9058 Office	0.00	92.77

The Source Store LLC

Balance Sheet

January, 2013

G/L #	Name	YTD balance	Prev YTD
911	MasterCard 8906 Hodge	0.00	6,482.50
914	MasterCard 1140 Brown	0.00	8,176.48
910	MasterCard 9390 Don	0.00	3,796.29
917	MasterCard 0933 Blair	0.00	16,363.55
918	MasterCard 3358 CAMMAS	0.00	776.20
248	Income Taxes Reserve	0.00	0.00
	Total Current Liabilities	**0.00**	**418,393.28**
260	LOAN Don	0.00	0.00
261	LOAN HODGE	0.00	0.00
262	Dell-Financial 002	0.00	0.00
263	Dell Financial 001	0.00	0.00
264	Lise Beauchemin-GrantLOAN	0.00	0.00
266	Syringa Bank F150	0.00	0.00
283	Nissan Loan 115740807	0.00	20,772.08
267	Syringa Bank Emb 803	0.00	0.00
281	Syringa Bank Emb. 804	0.00	0.00
282	Syringa Bank Loan 806	0.00	0.00
288	QB GL clearing	0.00	0.00
289	Deferred Income	0.00	0.00
	Total Long Term Debt	**0.00**	**20,772.08**
	Total Liabilities	**0.00**	**439,165.36**
	Stockholder's Equity		
270	Owner's Capital, Dwight B	246,914.19	291,808.00
271	Owner's Capital, Chris	157,814.45	188,594.00
272	Owner's Capital, Don Preh	-132,541.31	39,324.00
273	Owner's Capital, Mike Hod	-244,108.69	-84,614.19
275	Owner's Capital, M.Brown	2,251.75	20,936.00
274	Owner's Draw	0.00	0.00
280	Paid-In Surplus	0.00	0.00
285	Clearing Account	0.00	0.00
290	Retained Earnings	-620.73	0.00
	Current YTD Profit	**-8,132.70**	**-5,102.13**
	Total Stockholders Equity	**21,576.96**	**450,945.68**
	Total Liab. and Equity	**21,576.96**	**890,111.04**

Date: 01/15/13
Time: 16:29:44

The Source Store LLC
Profit & Loss Statement
January, 2013

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
300	Sales-Dropship	0.00	0.00	0.00	0.00
301	Sales-Inventory	0.00	0.00	0.00	0.00
309	Sales-Art	0.00	0.00	0.00	0.00
310	Freight Billed	0.00	0.00	0.00	0.00
302	Trade Discounts Allowed	0.00	0.00	0.00	0.00
303	Service Sales	0.00	0.00	0.00	0.00
304	ATEC Empl Sales/ Rebate	0.00	0.00	0.00	0.00
305	Sales Ret and Allowances	0.00	0.00	0.00	0.00
306	Cash Short or Over	0.00	0.00	0.00	0.00
307	ATEC Fulfillment Sales	0.00	0.00	0.00	0.00
308	MCW Fulfillment Sales	0.00	0.00	0.00	0.00
600	Cash Discounts	0.00	0.00	0.00	0.00
	Net Sales	**0.00**	**0.00**	**0.00**	**0.00**
400	Cost of Sales-Drop Shipmt	0.00	0.00	0.00	0.00
401	Cost of Sales-Inv Items	0.00	0.00	0.00	0.00
402	Inventory adjustments	0.00	0.00	0.00	0.00
403	Inventory variance	0.00	0.00	0.00	0.00
404	Purchases-Before Computer	0.00	0.00	0.00	0.00
405	Purch Returns and Allow	0.00	0.00	0.00	0.00
409	cost of shipping orders	0.00	0.00	0.00	0.00
408	Source Delivery	0.00	0.00	0.00	0.00
410	Freight Paid on Purchases	0.00	0.00	0.00	0.00
412	Fullfillment costs	0.00	0.00	0.00	0.00
422	ATEC Prog Sales Reserve	0.00	0.00	0.00	0.00
423	ATEC Prog Sales Cost	0.00	0.00	0.00	0.00
432	ATEC Fulfillment Reserve	0.00	0.00	0.00	0.00
433	ATEC Fulfillment Cost	0.00	0.00	0.00	0.00
442	MCW Fulfillment Reserve	0.00	0.00	0.00	0.00
443	MCW Fulfillment Cost	0.00	0.00	0.00	0.00
452	Production Cost Reserve	0.00	0.00	0.00	0.00
453	Production Cost Recovery	0.00	0.00	0.00	0.00
953	Production Supplies	0.00	0.00	0.00	0.00
955	Supplies for Ship/inv	0.00	0.00	0.00	0.00

SOURCE I 5191

The Source Store LLC
Profit & Loss Statement
January, 2013

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
950	Emb. Supplies & Expense	0.00	0.00	0.00	0.00
902	Graphic Art expense	0.00	0.00	0.00	0.00
806	Lease Embroidery Machine	0.00	0.00	0.00	0.00
977	CLC Royalty Fees	0.00	0.00	0.00	0.00
312	Insurance Chgd Customer	0.00	0.00	0.00	0.00
	Total Cost of Sales	**0.00**	**0.00**	**0.00**	**0.00**
	Gross Profit	**0.00**	**0.00**	**0.00**	**0.00**
700	Comm Exp/Salary Sales Per	0.00	0.00	0.00	0.00
705	Comm Exp/Sal Off Rel Sale	0.00	0.00	0.00	0.00
710	Bonus - Sales	0.00	0.00	0.00	0.00
946	ASI Promoshops	0.00	0.00	0.00	0.00
800	Advertising & Promotion	0.00	0.00	0.00	0.00
808	Samples and Catalogs	0.00	0.00	0.00	0.00
812	Business Promo (Entertai)	0.00	0.00	0.00	0.00
815	Travel (meals & Entertai)	0.00	0.00	0.00	0.00
816	Travel	0.00	0.00	0.00	0.00
817	China Employee Travel	0.00	0.00	0.00	0.00
820	Sales Training	0.00	0.00	0.00	0.00
824	Misc Selling Expense	0.00	0.00	0.00	0.00
	Total Selling Expenses	**0.00**	**0.00**	**0.00**	**0.00**
900	Office Wages & Salaries	0.00	0.00	0.00	0.00
901	Overtime wages	0.00	0.00	0.00	0.00
903	Garnished Wages	0.00	0.00	0.00	0.00
904	Officer's Salary & Bonus	0.00	0.00	0.00	0.00
905	Guaranted Paym MH	6,000.00	0.00	6,000.00	0.00
915	Guaranted Paym DP	0.00	0.00	0.00	0.00
925	Guaranteed Pmts--BROWN	0.00	0.00	0.00	0.00
945	Guaranteed Pmts--DWIGHT	0.00	0.00	0.00	0.00
935	Guaranteed Pmts--WOODY	0.00	0.00	0.00	0.00
801	Auto Fuel	0.00	0.00	0.00	0.00

SOURCE I 5192

The Source Store LLC
Profit & Loss Statement
January, 2013

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
802	Auto Repairs/Maintenance	0.00	0.00	0.00	0.00
803	Auto Payments	0.00	0.00	0.00	0.00
804	Misc. Auto Expense	0.00	0.00	0.00	0.00
805	Lease Honda Pilot	0.00	0.00	0.00	0.00
807	Lease Dell Server	0.00	0.00	0.00	0.00
907	Property Taxes Payable	159.93	0.00	159.93	0.00
906	UI Tax Expense	0.00	0.00	0.00	0.00
908	Payroll Taxes	1,136.77	0.00	1,136.77	0.00
912	Insurance - Employees	0.00	0.00	0.00	0.00
913	Workers Comp. Insurance	0.00	0.00	0.00	0.00
916	Pension/Profit Shar Contr	0.00	0.00	0.00	0.00
920	Officer's Life Insurance	0.00	0.00	0.00	0.00
924	Rent	0.00	0.00	0.00	0.00
928	Utilities	0.00	0.00	0.00	0.00
932	Insurance - General	0.00	0.00	0.00	0.00
933	Insurance liability/build	0.00	0.00	0.00	0.00
936	Property Taxes & Licenses	0.00	0.00	0.00	0.00
940	Depreciation/Amortization	0.00	0.00	0.00	0.00
941	Amortization Expense	0.00	0.00	0.00	0.00
944	Repairs & Maintenance	0.00	0.00	0.00	0.00
948	Telephone/Cell Phones	0.00	0.00	0.00	0.00
949	IT Expense	0.00	0.00	0.00	0.00
947	Computer Software	0.00	0.00	0.00	0.00
975	ASICS support	0.00	0.00	0.00	0.00
952	Office Supplies & Expense	0.00	0.00	0.00	0.00
411	Shipping expense	0.00	0.00	0.00	0.00
954	Waste-Damaged goods	0.00	0.00	0.00	0.00
956	Equipment Rental	0.00	0.00	0.00	0.00
960	Data Processing	0.00	0.00	0.00	0.00
961	Consulting Fees	0.00	0.00	0.00	0.00
964	Legal & Accounting	836.00	0.00	836.00	0.00
966	Bank Service Charges	0.00	0.00	0.00	0.00
967	Merchant Services	0.00	0.00	0.00	0.00
968	Bad Debts - Net	0.00	0.00	0.00	0.00
972	Postage	0.00	0.00	0.00	0.00

The Source Store LLC
Profit & Loss Statement
January, 2013

G/L #	Name	MTD balance	MTD %	YTD balance	YTD %
976	Dues & Subscriptions	0.00	0.00	0.00	0.00
980	Contributions	0.00	0.00	0.00	0.00
984	Miscellaneous	0.00	0.00	0.00	0.00
	Total Gen. & Adm. Expense	**8,132.70**	**0.00**	**8,132.70**	**0.00**
	Total Operating Expense	**8,132.70**	**0.00**	**8,132.70**	**0.00**
	Net Operating Profit	**-8,132.70**	**0.00**	**-8,132.70**	**0.00**
239	Gain/Loss on Equipment	0.00	0.00	0.00	0.00
500	Cash Discounts Earned	0.00	0.00	0.00	0.00
502	Interest Income	0.00	0.00	0.00	0.00
503	Finance Charge Income	0.00	0.00	0.00	0.00
504	Volume Rebate	0.00	0.00	0.00	0.00
506	Sample Rebate	0.00	0.00	0.00	0.00
508	Commission Income	0.00	0.00	0.00	0.00
510	Miscellaneous Income	0.00	0.00	0.00	0.00
	Total Other Income	**0.00**	**0.00**	**0.00**	**0.00**
605	Interest Expense	0.00	0.00	0.00	0.00
606	Lise Beauchemin-Grant Int	0.00	0.00	0.00	0.00
607	Finance Charges	0.00	0.00	0.00	0.00
610	Income Taxes	0.00	0.00	0.00	0.00
650	Other Expense	0.00	0.00	0.00	0.00
	Total Other Expense	**0.00**	**0.00**	**0.00**	**0.00**
	Total Other Income-Net	**0.00**	**0.00**	**0.00**	**0.00**
	Total Operating Profit	**-8,132.70**	**0.00**	**-8,132.70**	**0.00**

Date: 01/17/13
Time: 10:00:46

The Source Store LLC
Trial Balance - Balance Sheet
January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
100	Syringa Bank checking	59,386.93			38,839.07	20,547.86	
102	ProBarter Exchange	0.00		0.00		0.00	
104	Petty Cash	0.00		0.00		0.00	
107	CHASE Checking Account	0.00		0.00		0.00	
108	Savings Account-$ Market	0.00		0.00		0.00	
109	Hodge Legal Retainer	0.00		0.00		0.00	
110	Syringa Bank 9567	0.00		0.00		0.00	
112	Investments	0.00		0.00		0.00	
115	ProBarter Receivable	0.00		0.00		0.00	
116	Accounts Receivable	1,029.10		0.00		1,029.10	
117	Notes Receivable	0.00		0.00		0.00	
124	Finance Charge Receivable	0.00		0.00		0.00	
125	Miscellaneous Receivables	0.00		0.00		0.00	
128	Commission Adv or Loans	0.00		0.00		0.00	
132	Advance on Purchases	0.00		0.00		0.00	
133	Inventory Donations	0.00		0.00		0.00	
134	MCW Inv Deposit	0.00		0.00		0.00	
135	Drop Ship Merchandise	0.00		0.00		0.00	
136	Inventory	0.00		0.00		0.00	
137	Customer inventory	0.00		0.00		0.00	
138	Shipped inventory	0.00		0.00		0.00	
139	BSU Blank apparel	0.00		0.00		0.00	
140	Prepaid Commissions	0.00		0.00		0.00	
144	Prepaid Expenses	0.00		0.00		0.00	
149	Clearing Commission	0.00		0.00		0.00	
150	Cash Surrender Value Life	0.00		0.00		0.00	
154	Deposits	0.00		0.00		0.00	
158	Organization Costs	0.00		0.00		0.00	
160	Office Furniture & Equip	0.00		0.00		0.00	
161	Allow for Deprec F & E	0.00		0.00		0.00	
166	Shaker Moulds	0.00		0.00		0.00	

SOURCE I 5195

The Source Store LLC

Trial Balance - Balance Sheet

Date: 01/17/13
Time: 10:00:46

January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
100	Syringa Bank checking	59,386.93			38,839.07	20,547.86	
102	ProBarter Exchange	0.00		0.00		0.00	
104	Petty Cash	0.00		0.00		0.00	
107	CHASE Checking Account	0.00		0.00		0.00	
108	Savings Account-$ Market	0.00		0.00		0.00	
109	Hodge Legal Retainer	0.00		0.00		0.00	
110	Syringa Bank 9567	0.00		0.00		0.00	
112	Investments	0.00		0.00		0.00	
115	ProBarter Receivable	0.00		0.00		0.00	
116	Accounts Receivable	1,029.10		0.00		1,029.10	
117	Notes Receivable	0.00		0.00		0.00	
124	Finance Charge Receivable	0.00		0.00		0.00	
125	Miscellaneous Receivables	0.00		0.00		0.00	
128	Commission Adv or Loans	0.00		0.00		0.00	
132	Advance on Purchases	0.00		0.00		0.00	
133	Inventory Donations	0.00		0.00		0.00	
134	MCW Inv Deposit	0.00		0.00		0.00	
135	Drop Ship Merchandise	0.00		0.00		0.00	
136	Inventory	0.00		0.00		0.00	
137	Customer inventory	0.00		0.00		0.00	
138	Shipped inventory	0.00		0.00		0.00	
139	BSU Blank apparel	0.00		0.00		0.00	
140	Prepaid Commissions	0.00		0.00		0.00	
144	Prepaid Expenses	0.00		0.00		0.00	
149	Clearing Commission	0.00		0.00		0.00	
150	Cash Surrender Value Life	0.00		0.00		0.00	
154	Deposits	0.00		0.00		0.00	
158	Organization Costs	0.00		0.00		0.00	
160	Office Furniture & Equip	0.00		0.00		0.00	
161	Allow for Deprec F & E	0.00		0.00		0.00	
166	Shaker Moulds	0.00		0.00		0.00	

SOURCE I 5196

The Source Store LLC
Trial Balance - Balance Sheet
January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
167	1998 Windstar Van	0.00		0.00		0.00	
168	1998 Ford Truck	0.00		0.00		0.00	
169	Allow for Depreciation	0.00		0.00		0.00	
170	NISSAN Truck HODGE	0.00		0.00		0.00	
176	Land	0.00		0.00		0.00	
180	Building	0.00		0.00		0.00	
181	Allow for Amortization	0.00		0.00		0.00	
188	Leasehold Improvements	0.00		0.00		0.00	
189	Allow for Amort Lease Imp	0.00		0.00		0.00	
190	Goodwill	0.00		0.00		0.00	
200	Notes Payable	0.00		0.00		0.00	
204	Accounts Payable		30,706.37	30,706.37		0.00	
205	A/P clearing	0.00		0.00		0.00	
208	Accrued Wages & Salaries	0.00		0.00		0.00	
212	Accrued Commissions Pay	0.00		0.00		0.00	
215	Accrued Comm Reserve	0.00		0.00		0.00	
216	Salesman's Reserve Pay	0.00		0.00		0.00	
219	UI payroll liabilities	0.00		0.00		0.00	
220	FICA/SS W/H Taxes	0.00		0.00		0.00	
221	FICA/Medicare W/H Tax	0.00		0.00		0.00	
222	Federal W/H Taxes	0.00		0.00		0.00	
224	State W/H Taxes	0.00		0.00		0.00	
225	Emplr PR Tax Liabilities	0.00		0.00		0.00	
228	Sales Tax Payable	0.00		0.00		0.00	
230	Sales Tax reimbursement	0.00		0.00		0.00	
232	Interest Payable	0.00		0.00		0.00	
234	MCW Inv-deposit	0.00		0.00		0.00	
235	Deferred Income Fin Chg	0.00		0.00		0.00	
237	Reserve customer invent	0.00		0.00		0.00	
238	Suspense Account	0.00		0.00		0.00	
240	Accrued Expenses	0.00		0.00		0.00	

The Source Store LLC
Trial Balance - Balance Sheet
January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
244	Customer Deposits	0.00		0.00		0.00	
245	Cash/Credit Card Deposits	0.00		0.00		0.00	
248	Income Taxes Reserve	0.00		0.00		0.00	
260	LOAN Don	0.00		0.00		0.00	
261	LOAN HODGE	0.00		0.00		0.00	
262	Dell-Financial 002	0.00		0.00		0.00	
263	Dell Financial 001	0.00		0.00		0.00	
264	Lise Beauchemin-GrantLOAN	0.00		0.00		0.00	
265	LOAN-Prehn	0.00		0.00		0.00	
266	Syringa Bank F150	0.00		0.00		0.00	
267	Syringa Bank Emb 803	0.00		0.00		0.00	
268	Syringa Bank Emb. 802	0.00		0.00		0.00	
269	Receivable Loan	0.00		0.00		0.00	
270	Owner's Capital, Dwight B		246,914.19	0.00			246,914.19
271	Owner's Capital, Chris		157,814.45	0.00			157,814.45
272	Owner's Capital, Don Preh	132,541.31		0.00		132,541.31	
273	Owner's Capital, Mike Hod	244,108.69		0.00		244,108.69	
274	Owner's Draw	0.00		0.00		0.00	
275	Owner's Capital, M.Brown		2,251.75	0.00			2,251.75
280	Paid-In Surplus	0.00		0.00		0.00	
281	Syringa Bank Emb. 804	0.00		0.00		0.00	
282	Syringa Bank Loan 806	0.00		0.00		0.00	
283	Nissan Loan 115740807	0.00		0.00		0.00	
285	Clearing Account	0.00		0.00		0.00	
287	QB Inventory Clearing	0.00		0.00		0.00	
288	QB GL clearing	0.00		0.00		0.00	
289	Deferred Income	0.00		0.00		0.00	
290	Retained Earnings	620.73		0.00		620.73	
909	MasterCard 9058 Office	0.00		0.00		0.00	
910	MasterCard 9390 Don	0.00		0.00		0.00	
911	MasterCard 8906 Hodge	0.00		0.00		0.00	

The Source Store LLC
Trial Balance - Balance Sheet
January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
914	MasterCard 1140 Brown	0.00		0.00		0.00	
917	MasterCard 0933 Blair	0.00		0.00		0.00	
918	MasterCard 3358 CAMMAS	0.00		0.00		0.00	
	Totals	**437,686.76**	**437,686.76**	**30,706.37**	**38,839.07**	**398,847.69**	**406,980.39**
					YTD balance		**-8,132.70**

SOURCE I 5199

The Source Store LLC

Trial Balance - Profit & Loss Statement

January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
239	Gain/Loss on Equipment	0.00		0.00		0.00	
300	Sales-Dropship	0.00		0.00		0.00	
301	Sales-Inventory	0.00		0.00		0.00	
302	Trade Discounts Allowed	0.00		0.00		0.00	
303	Service Sales	0.00		0.00		0.00	
304	ATEC Empl Sales/ Rebate	0.00		0.00		0.00	
305	Sales Ret and Allowances	0.00		0.00		0.00	
306	Cash Short or Over	0.00		0.00		0.00	
307	ATEC Fulfillment Sales	0.00		0.00		0.00	
308	MCW Fulfillment Sales	0.00		0.00		0.00	
309	Sales-Art	0.00		0.00		0.00	
310	Freight Billed	0.00		0.00		0.00	
312	Insurance Chgd Customer	0.00		0.00		0.00	
400	Cost of Sales-Drop Shipmt	0.00		0.00		0.00	
401	Cost of Sales-Inv Items	0.00		0.00		0.00	
402	Inventory adjustments	0.00		0.00		0.00	
403	Inventory variance	0.00		0.00		0.00	
404	Purchases-Before Computer	0.00		0.00		0.00	
405	Purch Returns and Allow	0.00		0.00		0.00	
408	Source Delivery	0.00		0.00		0.00	
409	cost of shipping orders	0.00		0.00		0.00	
410	Freight Paid on Purchases	0.00		0.00		0.00	
411	Shipping expense	0.00		0.00		0.00	
412	Fullfillment costs	0.00		0.00		0.00	
422	ATEC Prog Sales Reserve	0.00		0.00		0.00	
423	ATEC Prog Sales Cost	0.00		0.00		0.00	
432	ATEC Fulfillment Reserve	0.00		0.00		0.00	
433	ATEC Fulfillment Cost	0.00		0.00		0.00	
442	MCW Fulfillment Reserve	0.00		0.00		0.00	

SOURCE I 5200

The Source Store LLC

Trial Balance - Profit & Loss Statement

January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
443	MCW Fulfillment Cost	0.00		0.00		0.00	
452	Production Cost Reserve	0.00		0.00		0.00	
453	Production Cost Recovery	0.00		0.00		0.00	
500	Cash Discounts Earned	0.00		0.00		0.00	
502	Interest Income	0.00		0.00		0.00	
503	Finance Charge Income	0.00		0.00		0.00	
504	Volume Rebate	0.00		0.00		0.00	
506	Sample Rebate	0.00		0.00		0.00	
508	Commission Income	0.00		0.00		0.00	
510	Miscellaneous Income	0.00		0.00		0.00	
600	Cash Discounts	0.00		0.00		0.00	
605	Interest Expense	0.00		0.00		0.00	
606	Lise Beauchemin-Grant Int	0.00		0.00		0.00	
607	Finance Charges	0.00		0.00		0.00	
610	Income Taxes	0.00		0.00		0.00	
650	Other Expense	0.00		0.00		0.00	
700	Comm Exp/Salary Sales Per	0.00		0.00		0.00	
705	Comm Exp/Sal Off Rel Sale	0.00		0.00		0.00	
710	Bonus - Sales	0.00		0.00		0.00	
800	Advertising & Promotion	0.00		0.00		0.00	
801	Auto Fuel	0.00		0.00		0.00	
802	Auto Repairs/Maintenance	0.00		0.00		0.00	
803	Auto Payments	0.00		0.00		0.00	
804	Misc. Auto Expense	0.00		0.00		0.00	
805	Lease Honda Pilot	0.00		0.00		0.00	
806	Lease Embroidery Machine	0.00		0.00		0.00	
807	Lease Dell Server	0.00		0.00		0.00	
808	Samples and Catalogs	0.00		0.00		0.00	
812	Business Promo (Entertai)	0.00		0.00		0.00	

SOURCE I 5201

The Source Store LLC

Trial Balance - Profit & Loss Statement

January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
815	Travel (meals & Entertai)	0.00		0.00		0.00	
816	Travel	0.00		0.00		0.00	
817	China Employee Travel	0.00		0.00		0.00	
820	Sales Training	0.00		0.00		0.00	
824	Misc Selling Expense	0.00		0.00		0.00	
900	Office Wages & Salaries	0.00		0.00		0.00	
901	Overtime wages	0.00		0.00		0.00	
902	Graphic Art expense	0.00		0.00		0.00	
903	Garnished Wages	0.00		0.00		0.00	
904	Officer's Salary & Bonus	0.00		0.00		0.00	
905	Guaranted Paym MH	0.00		6,000.00		6,000.00	
906	UI Tax Expense	0.00		0.00		0.00	
907	Property Taxes Payable	0.00		159.93		159.93	
908	Payroll Taxes	0.00		1,136.77		1,136.77	
912	Insurance - Employees	0.00		0.00		0.00	
913	Workers Comp. Insurance	0.00		0.00		0.00	
915	Guaranted Paym DP	0.00		0.00		0.00	
916	Pension/Profit Shar Contr	0.00		0.00		0.00	
920	Officer's Life Insurance	0.00		0.00		0.00	
924	Rent	0.00		0.00		0.00	
925	Guaranteed Pmts--BROWN	0.00		0.00		0.00	
928	Utilities	0.00		0.00		0.00	
932	Insurance - General	0.00		0.00		0.00	
933	Insurance liability/build	0.00		0.00		0.00	
935	Guaranteed Pmts--WOODY	0.00		0.00		0.00	
936	Property Taxes & Licenses	0.00		0.00		0.00	
940	Depreciation/Amortization	0.00		0.00		0.00	
941	Amortization Expense	0.00		0.00		0.00	
944	Repairs & Maintenance	0.00		0.00		0.00	

SOURCE I 5202

The Source Store LLC

Trial Balance - Profit & Loss Statement

January, 2013

G/L #	Name	Beginning balance Debit	Beginning balance Credit	MTD activity Debit	MTD activity Credit	YTD balance Debit	YTD balance Credit
945	Guaranteed Pmts--DWIGHT	0.00		0.00		0.00	
946	ASI Promoshops	0.00		0.00		0.00	
947	Computer Software	0.00		0.00		0.00	
948	Telephone/Cell Phones	0.00		0.00		0.00	
949	IT Expense	0.00		0.00		0.00	
950	Emb. Supplies & Expense	0.00		0.00		0.00	
952	Office Supplies & Expense	0.00		0.00		0.00	
953	Production Supplies	0.00		0.00		0.00	
954	Waste-Damaged goods	0.00		0.00		0.00	
955	Supplies for Ship/inv	0.00		0.00		0.00	
956	Equipment Rental	0.00		0.00		0.00	
960	Data Processing	0.00		0.00		0.00	
961	Consulting Fees	0.00		0.00		0.00	
964	Legal & Accounting	0.00		836.00		836.00	
966	Bank Service Charges	0.00		0.00		0.00	
967	Merchant Services	0.00		0.00		0.00	
968	Bad Debts - Net	0.00		0.00		0.00	
972	Postage	0.00		0.00		0.00	
975	ASICS support	0.00		0.00		0.00	
976	Dues & Subscriptions	0.00		0.00		0.00	
977	CLC Royalty Fees	0.00		0.00		0.00	
980	Contributions	0.00		0.00		0.00	
984	Miscellaneous	0.00		0.00		0.00	
	Totals	**0.00**	**0.00**	**8,132.70**	**0.00**	**8,132.70**	**0.00**
						YTD balance	**8,132.70**
Grand totals		**437,686.76**	**437,686.76**	**38,839.07**	**38,839.07**	**406,980.39**	**406,980.39**

SOURCE I 5203

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHALE L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIRBORNE, Defendants.	Case No. CV-OC-2012-07728 MEMORANDUM DECISION AND ORDER RE: COSTS AND FEES
CHRISTOPHER CLAIBORNE, Counterclaimant, DONNELLY PREHN and DWIGHT BANDAK, Counterdefendants.	

Background and Prior Proceedings

This action arises from the dissolution of a business, The Source Store, LLC ("Source1"). According to the Second Amended Complaint, Source1 "markets, develops, designs and produces merchandise and apparel for customers' promotional and marketing purposes". *See* Second Amended Complaint at p. 3, ¶ 15. Plaintiffs Donnely Prehn and

Dwight Bandak ("Plaintiffs") and Defendants Michael L. Hodge, II ("Hodge"), George M. Brown ("Brown") and Christopher Clairborne ("Clairborne") are the former members of Source1. According to the Second Amended Complaint, The Source, LLC ("Source2") is a similar business which began operations in connection with the dissolution of Source1. *See* Second Amended Complaint at p. 10, ¶¶ 50, 51. Hodge, Brown and Clairborne are members of Source2.

Pursuant to a stipulation, the Court entered an Order on May 17, 2012 which provided for the dissolution and winding up of Source1 as well as the release of Prehn and Hodge from non-compete agreements on May 18, 2012. The Order contemplated that the business conducted as Source2 would continue.

On about July 27, 2012, Plaintiffs served their initial discovery requests on Source2. These requests included interrogatories and requests for production. Source2 responded on or about September 7, 2012. Source2 provided some answers and produced some documents. However, Source2 also made objections to some of the requests. Additionally, Source2 objected to answering interrogatories or producing any documents for the period after May 18, 2012, the date the members were released from the non-compete agreements. Copies of the discovery requests and responses are attached as Exhibits A and B to Matthew J. McGee's September 21, 2012 Affidavit in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests.

The Plaintiffs considered the responses to be insufficient and notified Source2 of the alleged deficiencies in a letter dated September 13, 2012. A copy of this letter is attached as

Exhibit C to Matthew J. McGee's September 21, 2012 Affidavit in Support of Motion to Compel Responses of the Source, LLC to Plaintiffs' Discovery Requests. The Plaintiffs stated they would file a motion to compel if no response was forthcoming by September 20, 2012. On September 21, 2012, both parties acted. The Plaintiffs filed this Motion to Compel.

As set forth in a letter dated September 21, 2012, Source2 provided additional responses to the discovery requests. A copy of this letter is attached as Exhibit A to the October 4, 2012 Affidavit of Counsel (Ed Guerricabeitia) in Support of Motion for Protective Order and in Opposition to Motion to Compel. In this letter, Source2 asserts that information regarding its activities after March 18, 2012 "are not relevant and is information that is confidential and proprietary in nature in light of the fact that Plaintiffs seek to compete with Source2." *Id.* at p. 2.

On October 2, 2012, the parties spoke by telephone. Plaintiffs asserted the responses were still insufficient and that they would move forward with the motion to compel. On October 4, 2012, both parties again acted nearly simultaneously. The Plaintiffs sent a more detailed description of the alleged deficiencies. Source2 filed its Objection to the Motion to Compel and a Motion for Protective Order. In this objection and motion, Source2 argued that all business records after May 18, 2012 were not relevant, and asserted that the Court should order that Source2 had no obligation to produce any records for the period after May 18, 2012.

Throughout this period, the parties discussed a possible protective order. The parties disagree about the nature and scope of these discussions.

On October 16, 2012, the Court held a hearing on this matter. Matthew J. McGee, Moffat, Thomas, Barrett, Rock, & Fields, Chartered, appeared and argued for the Plaintiffs. Ed Guerricabeita, Davidson, Copple, Copple, & Copple, LLP, appeared and argued for The Source, LLC. At the hearing, counsel for Plaintiffs stated that the parties had spoken before the hearing and discussed a possible protective order but stated he had not had an opportunity to review it. Counsel for Source2 stated that he had recently provided some business records for the period after May 18, 2012, and stated that Source2 would provide additional business records for the period after May 18, 2012, but only if there was an appropriate protective order. Source2 argued that such documents were proprietary and confidential because the Plaintiffs and Source2 were business competitors. Source2 also argued that other documents were proprietary and properly withheld. At that time, the Court took the matter under advisement.

The Court announced its ruling on the motion to compel at a hearing on November 20, 2012. Counsel for both parties were present as before. At that time, the Court characterized the dispute as to whether business records for the period after May 18, 2012 were subject to discovery. The Court observed that the allegations of the amended complaint included conduct and activities involving the parties and the operation of Source2 after the period ending May 18, 2012, and for that reason were subject to discovery under I.R.C.P. 26. The Court ruled that these allegations were sufficient to make the information subject to discovery. As to a protective order, the Court stated that the parties should make appropriate

arrangements between themselves and, failing that, seek an appropriate protective order from the Court.

On December 4, 2012, the Plaintiffs filed a Memorandum of Fees and Costs Re: Motion to Compel pursuant to I.R.C.P. 37(a). Plaintiffs asserted no costs had been incurred but requested three thousand five hundred sixty dollars ($3,560) in fees for time billed by two attorneys and a senior paralegal. On December 14, 2012, Source2 responded. It argued that 1) the Plaintiff was not the prevailing party "in whole" and therefore the Court should apportion fees or elect to not award fees; 2) the motion to compel was not necessary; 3) the fees were not reasonable; 4) the actions of the Plaintiffs led to the need for the hearing on the motion to compel and not the behavior of the Source2; and 5) Source2's good faith obviates any need to award fees. On January 15, 2013, the Plaintiffs filed their response to Source2's briefing along with an affidavit by counsel and supporting exhibits. Plaintiff's disputed Source's contention that the issue to be resolved on the motion to compel was actually the nature of a protective order. The Plaintiffs also dispute the nature of the discovery offered by the Source2 the morning before the hearing.

On January 22, 2013, the Court held a hearing regarding the fees requested by the Plaintiffs. Matthew J. McGee appeared for the Plaintiffs and Ed Guerricabeita appeared for Source2. Following the hearing, the Court took this matter under advisement.

Discussion

I.R.C.P. 37(a)(4) states that the prevailing party on a motion to compel shall awarded "reasonable expenses incurred in obtaining the order, including attorney's fees, unless the

court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." Whether to award fees is left to the discretion of the trial Court. *Carillo v. Boise Tire Co., Inc.*, 152 Idaho, 741, 755, 274 P.3d 1256, 1270 (2011). However, the scope of such discretion is limited by the language of the rule that states "reasonable expenses shall be awarded unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust."

The Court finds that the motion was properly brought, that the Plaintiffs are the prevailing party, and that an award of reasonable expenses is appropriate in this matter. Where, as here, the parties disagreed regarding the permissible scope of discovery, a motion to compel is properly brought. The Court found that the Plaintiffs were entitled to discovery.

While it does appear that Source2 eventually agreed to provide some of the information for the period after May 18, 2012, Source2 did not do so until the time of the hearing on the motion to compel. During the hearing, Source2 primarily argued that a protective order was necessary. Previously, Source2 had argued that the information was irrelevant. The Court does not agree with Source2's contention that either both parties prevailed, or neither party prevailed. Rather, the Court finds that the Plaintiffs are the prevailing parties.

The Defendant argues that the hearing was unnecessary because it offered the required discovery before the hearing. The opposing affidavits and the e-mail records from October 16, 2012, which were submitted to the Court as exhibits, show that the parties did not come to

an agreement on the morning of the hearing. It is not clear precisely which documents the Source2 stated it would eventually disclose. The gravamen of the dispute between the parties concerned the scope of discovery and that there were some documents that the Defendant either refused to disclose or did not disclose until the time of the hearing the Motion to Compel.

For all of the above stated reasons, the Court finds that an award in this matter is proper.

The Court recognizes that it has discretion to determine what constitutes reasonable expenses. In determining the reasonableness of a fee request, the Court considers those factors set forth in I.R.C.P. 54(e)(3):

(A) The time and labor required.
(B) The novelty and difficulty of the questions
(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
(D) The prevailing charges for like work.
(E) Whether the fee is fixed or contingent.
(F) The time limitations imposed by the client or the circumstances of the case.
(G) The amount involved and the results obtained.
(H) The undesirability of the case.
(I) The nature and length of the professional relationship with the client.
(J) Awards in similar cases.
(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
(L) Any other factor which the court deems appropriate in the particular case.

The Court has considered each factors, after due consideration of the relevant factors, the Court finds the amount of two thousand dollars ($2,000.00) is a reasonable attorney fee

attributable to this matter and awards that amount in favor of the Plaintiffs pursuant to I.R.C.P. 37(a)(4).

IT IS SO ORDERED.

Dated this 21 day of February 2013.

Patrick H. Owen
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of February, 2013, I mailed (emailed) a true and correct copy of the within instrument to:

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CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Court Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

NO. _____
A.M. _____ FILED P.M. 3:53

MAR 0 1 2013

CHRISTOPHER D. RICH, Clerk
By STEPHANIE VIDAK
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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 JOINT MOTION TO DISMISS DERIVATIVE CLAIMS
Cross claims and counterclaims.	

Pursuant to Idaho Code § 30-6-902 and 906 and I.R.C.P.12(b)(6) and 23(f), The Source Store, LLC (herein "Source I"); The Source, LLC ("Source 2") and Michael L. Hodge, II ("Hodge") (collectively the "Defendants"), by and through their respective counsels of record, motion this Court for an order dismissing Claims 2 through 4 and 6 through 12 of the Second Amended Complaint filed June 29, 2012, to the extent that said claims are alleged as derivative actions or claims whose remedies are sought "in favor of Source I."

Defendants make this motion on the grounds and for the reasons that the Plaintiffs have a direct conflict of interest in pursuing derivative claims on behalf or in favor of Source I in the same lawsuit in which they are suing Source I for a monetary judgment. Plaintiffs' self-interests are in direct conflict with those of the company's such that Plaintiffs cannot qualify as adequate representative or disinterested parties who can represent the interests of the company. Further, the Plaintiffs failed to comply with the procedural requirements stated in Rule 23(f) for asserting derivative claims and have failed to properly plead the same. Lastly, Plaintiffs are prohibited from using their own counsel to represent Source I interests, but instead must hire independent counsel to prosecute the derivative claims. This motion is supported by the pleadings on record, Affidavit of Ed Guerricabeitia and the Memorandum in Support of Joint Motion to Dismiss Derivative Claims filed concurrently herewith.

DATED this 1st day of March, 2013.

DAVISON, COPPLE, COPPLE, & COPPLE, LLP

Ed Guerricabeitia, Of the Firm
Attorneys for Michael L. Hodge II and The Source, LLC

EVANS KEANE LLP

Judy L. Geier, Of the Firm

Pursuant to Idaho Code § 30-6-902 and 906 and I.R.C.P.12(b)(6) and 23(f), The Source Store, LLC (herein "Source I"); The Source, LLC ("Source 2") and Michael L. Hodge, II ("Hodge") (collectively the "Defendants"), by and through their respective counsels of record, motion this Court for an order dismissing Claims 2 through 4 and 6 through 12 of the Second Amended Complaint filed July 2, 2012, to the extent that said claims are alleged as derivative actions or claims whose remedies are sought "in favor of Source I."

Defendants make this motion on the grounds and for the reasons that the Plaintiffs have a direct conflict of interest in pursuing derivative claims on behalf or in favor of Source I in the same lawsuit in which they are suing Source I for a monetary judgment. Plaintiffs' self-interests are in direct conflict with those of the company's such that Plaintiffs cannot qualify as adequate representative or disinterested parties who can represent the interests of the company. Further, the Plaintiffs failed to comply with the procedural requirements stated in Rule 23(f) for asserting derivative claims and have failed to properly plead the same. Lastly, Plaintiffs are prohibited from using their own counsel to represent Source I interests, but instead must hire independent counsel to prosecute the derivative claims. This motion is supported by the pleadings on record and the Memorandum in Support of Joint Motion to Dismiss Derivative Claims filed concurrently herewith.

DATED this 27th day of February, 2013.

DAVISON, COPPLE, COPPLE, & COPPLE, LLP

Ed Guerricabeitia, Of the Firm
Attorneys for Defendants/Cross-Defendants
Michael L. Hodge II and The Source, LLC

EVANS KEANE LLP

Judy L. Geier, Of the Firm
Attorneys for The Source Store, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2013, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

Michael O. Roe MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED 101 S. Capitol Blvd., 10th Fl P.O. Box 829 Boise, ID 83701 *Attorneys for Plaintiffs*	[ ] U.S. Mail [✓] Fax [ ] Overnight Delivery [ ] Hand Delivery
Charles C. Crafts CRAFTS LAW INC. 7363 Barrister Boise, ID 83704 *Attorney for Defendant George M. Brown*	[ ] U.S. Mail [✓] Fax [ ] Overnight Delivery [ ] Hand Delivery
Brian L. Boyle 903 E. Winding Creek Dr., Ste. 150 Eagle, ID 83616 *Attorney for Defendant Christopher Claiborne*	[ ] U.S. Mail [✓] Fax [ ] Overnight Delivery [ ] Hand Delivery

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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS DERIVATIVE CLAIMS**
Cross claims and counterclaims.	

Pursuant to Idaho Code § 30-6-902 and 906 and I.R.C.P. 12(b) (6) and 23(f), the Defendants The Source Store, LLC (herein "Source I"); The Source, LLC ("Source 2") and Michael L. Hodge, II ("Hodge") (collectively the "Defendants") by and through their respective counsels of record, motion this Court for an order dismissing ten claims improperly asserted by the Plaintiffs in the Second Amended Complaint as derivative actions. In support, the Defendants argue as follows:

I. INTRODUCTION

There is an inherent conflict of interest arising from Plaintiffs pursuing derivative claims in favor of Source I while also suing Source I for their own benefit such that Plaintiffs cannot "fairly and adequately represent" the Company and its members in enforcing the Company's rights. *I.R.C.P.* 23(f). In short, Defendants argue that Plaintiffs play both sides of the fence by maintaining an action against Source I while at the same time purporting to represent Source I in a suit against the Company, its directors, and members. The Second Amended Complaint fails to comply with Idaho statute and rules regarding derivative suits. Plaintiffs are prohibited from using their own counsel to represent Source I, but instead must hire independent counsel to prosecute the derivative claims.

II. THE DERIVATIVE CLAIMS AT ISSUE

Of the 19 claims asserted in the Second Amended Complaint, ten are improperly alleged as derivative claims. The claims asserted as derivative actions are as follows:

1. **Second Claim: Breach of Operating Agreement**. Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as a result of the contended breaches. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

2. **Third Claim: Breach of Non-Compete Agreement.** Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as a result of the contended breaches. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

3. **Fourth Claim: Breach of Fiduciary Duty.** Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as a result of the contended breaches. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

4. **Sixth Claim: Breach of Loan Agreement Between Source 1 and Hodge:** Plaintiffs allege that "Source 1 has suffered and will suffer monetary damages" as a result of the contended breaches. Plaintiffs seek a money judgment for Source 1.

5. **Seventh Claim: Violation of the Idaho Trade Secrets Act.** Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as a result of the contended violations. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

6. **Eighth Claim: Violation of the Lanham Act.** Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as a result of the contended violations. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

7. **Ninth Claim: Common Law Trade Name and Trademark Infringement.** Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as a result of the contended violations. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

8. **Tenth Claim: Unjust Enrichment.** Plaintiffs allege that Source 2, through an unfair means, has received a benefit belonging Source 1 to the detriment of Source 1 and the Plaintiffs. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

9. **Eleventh Claim: Tortious Interference with Contract.** Plaintiffs allege that "Source 1, Prehn and Bandak have suffered and will suffer monetary damages" as result of Defendants Hodge, Brown and Source 2's actions. Plaintiffs seek a money judgment "in favor of Source 1" and themselves.

10. **Twelfth Claim: Constructive Trust.** Plaintiffs seek the creation of a constructive trust for the benefit of "Source 1" and themselves based on allegations that Defendants Hodge, Brown, Claiborne and Source 2 have been unjustly enriched.

III. AUTHORITIES AND ARGUMENT

A. PLAINTIFFS LACK STANDING TO PURSUE THE DERRIVATIVE CLAIMS BECAUSE THEY ARE NOT DISINTERESTED REPRESENTATIVES OF THE ENTITY AND SEEK ONLY TO LEVERAGE OF THEIR OWN DIRECT CLAIMS.

Standing is a jurisdictional issue which may be raised at any juncture. *Martin v. Camas County ex rel. Bd. of Comm'rs*, 150 Idaho 508, 512 (2011). A plaintiff's standing to prosecute a derivative claim is predicated on the plaintiff's compliance with *I.R.C.P.* 23(f) in bringing the action. Rule 23 (f), "*Derivative actions by shareholders*", states among other procedural requirements that "[A] derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or the members similarly situated in enforcing the right of the corporation or association." Rule 23 (f) was promulgated for the purpose of preventing abuses by disgruntled members to seek unsupported claims against the entity. *Orrock v. Appleton*, 147 Idaho 613, 617 (2009).

"An adequate representative must have the capacity to vigorously and conscientiously prosecute a derivative suit and be free from economic interests that are antagonistic to the interests of the class." *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990) (internal cites omitted). A factored analysis is used to determine whether a plaintiff is an adequate representative including the following factors:

> (1) Indications that the plaintiff is not the true party interest; (2) the plaintiff's unfamiliarity with the litigation and unwillingness to learn about the suit; (3) the degree of control exercised by the attorneys over the litigation; (4) the degree of support received by the plaintiff from other shareholders; (5) the lack of any personal commitment to the action on the part of the representative plaintiff (6) the remedy sought by plaintiff in the derivative action; (7) the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action itself; and (8) plaintiff's vindictiveness toward the defendants.

Id.

In this matter, the Plaintiffs are economically antagonistic to Source I in that Plaintiffs have directly sued Source I and simultaneously are attempting to represent Source I. Additionally, many of the same facts alleged to support their claims directly suing Source I are repeated as facts

supporting their derivative actions. For example, the First Claim of Relief alleges a direct claim against Source I for "Breach of Agreements for Prehn Loan, Back Salary, and Prehn Bonus." These same allegations are the basis for much of the Second Claim for Relief that is a derivative claim in which Prehn attempts to pursue a company right by suing because distributions were allegedly made prior to repayment of the "Prehn Loan." Incidentally, all members, including Prehn and Bandak, agreed, accepted and received their capital contribution for Source I earnings generated in 2010 and 2011.[1] Despite payment and receipt of over $170,000 by Prehn for his capital distribution from past Source I earnings, Prehn now complains that Hodge breached the Operating Agreement despite doing so with the members' approval.[2] Importantly, Prehn did not reject the tendered payment nor has he returned the capital distribution made back to Source I. Yet, Prehn asserts the Second Claim for Relief on behalf of Source I.

The Fourteenth through Nineteenth claims are asserted directly against Source I and are rooted in allegations that Prehn was purportedly denied the opportunity of fair competitive bidding in acquiring Source I's assets during the liquidation auction. These same facts are alleged to support Plaintiffs derivative claims asserted in the Third, Fourth, Fifth and Seventh through Eleventh claims in which Plaintiffs seek to enforce for Source I company rights allegedly stemming from the auction.

There are no factual allegations distinguishing the company right sought to be enforced through the directive claims from the personal claims of the Plaintiffs. Plaintiffs cannot have it both ways in which they assert factual allegations to support their direct claims against Source I and employ the same allegations to proceed in favor of Source I. There is nothing disinterested about Plaintiffs attempt to leverage their self interests under the guise of derivative claims.

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1 *See Affidavit of Ed Guerricabeitia, Exhibit H.*
2 *See id.*

On April 4, 2012, all members of Source 1 unanimously voted to dissolve the company effective April 1, 2012.[3] The members' percentage ownership in the company was as follows:

Michael Hodge: 39.636%
Donnelly Prehn: 37.974%
Dwight Bandak: 10.66%
Christopher Claiborne: 6.79%
George Brown: 4.94%[4]

As mentioned above, the Second Amended Complaint asserts Claim 1 against Source I in favor of Plaintiff, Donnelly Prehn, individually.

Claims 2 through 4 and 6 through 12 are asserted as derivative claims on behalf of Source 1 against the other named Defendants dependent on the claim asserted.

Claim 5 for Breach of Covenant of Good Faith and Fair Dealing is asserted by Plaintiffs, individually, against Defendants, Hodge, Brown and Claiborne, individually, as members of Source I.

Claims 14 through 19 are asserted by Plaintiffs, individually, against Source I and Mr. Hodge.

Plaintiffs, specifically Prehn, are in no way a disinterested member seeking solely to protect and enforce the interests of Source I. Instead, it is clear that Prehn through the disguise of a derivative claim is seeking to recover **his** damages against Hodge, personally, not that of the other members. This could be not further evident by Plaintiffs filing a Motion to Compel against Source I, despite having access to all of Source I's books and records. The Second Amended Complaint is in fact a direct action under Idaho Code § 30-6-901 and should be treated as such with dismissal of the purported derivative action.

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3 *See id.*, Exhibits A through F.

B. PLAINTIFFS' DEFECTIVELY PLED DERIVATIVE CLAIMS FAILED TO FOLLOW THE FORMALITIES REQUIRED UNDER THE RULES AND STATUTES FOR INITIATING A DERIVATIVE ACTION.

Idaho Code § 30-6-902 requires that **prior to** a member maintaining a derivative action to enforce a right of a limited liability company, the member must first make demand that the company bring an action to enforce the right or establish that demand would be futile. Rule 23(f) requires that if the company fails to enforce the right, a member may file a complaint to enforce the right. The complaint must be **verified** and must allege that the plaintiff was a member at the time of the transaction complained of and that the action is not collusive to confer jurisdiction on the Court that it would not otherwise have. *IRCP* 23(f). In addition, Rule 23(f) requires the following:

> The complaint shall also allege *with particularity* the efforts, if any, made by the plaintiff to obtain the action which plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for plaintiff's failure to obtain the action or for not making the effort.

I.R.C.P. 23(f) (Emphasis Added). *See also, Orrock v. Appleton*, 147 Idaho 613, 618 (2009).

The demand requirement as a precursor to a valid derivative action is significant in that its purpose "affords the directors an opportunity exercise their reasonable business judgment." *Orrock at 618.*

In analyzing whether a derivative complaint is properly pled, the Idaho Supreme Court has stated:

> The test in a shareholder derivative action is whether the plaintiff alleged 'particularized facts to creating a reasonable doubt that a majority of the Board would be disinterested or independent in making a decision on a demand. To determine whether demand is futile the court must decide 'whether, under the particularized facts alleged, a reasonable doubt is created that: (1) the directors are disinterested and independent [or] (2) the challenged transaction as otherwise the product of valid

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4 *See id., Exhibit G.*

business judgment.

Id. On a motion to dismiss, "factual allegations are accepted as true, unless they are purely conclusory." *Id.*

In this matter, the Plaintiffs' Second Amended Complaint fails to comply with the requirements of the statute and rules. It is simply defective on many levels. The Plaintiffs' complaint is not verified, nor does it state "with particularity" facts that demand was made on the Defendants. More importantly, the complaint fails to provide particularized facts enough for the Court to make a determination that a reasonable doubt exists whether a majority of Source I's board members would be disinterested or independent in making the decision to act on Plaintiffs asserted claims or whether the challenged transaction is otherwise the exercise of valid business judgment.

With regards to demand, Plaintiffs simply repeat the following conclusory statement in each of the derivative claims:

> A demand on Hodge requesting Source 1 to bring an action to enforce the foregoing rights and claims of Source 1 would be futile because Hodge is neither disinterested and independent, nor are the challenged transactions the product of Hodge's valid exercise of business judgment.

The Plaintiffs simply made no demand and assert conclusory statements that demand was futile. There are no factual allegations supporting Plaintiffs conclusion that demand was futile. For example, there are no allegations that Plaintiffs were denied participation in the membership meetings leading up to the members' decision to dissolve the entity. There are no allegations that prior to initiating this lawsuit, Plaintiffs made efforts to communicate their concerns, if any, regarding the company's rights or the treatment of the company's liquidation. Absent from the complaint are any allegations that the Plaintiffs were denied participation in any part of the liquidation process, including negotiating the terms of the auction. Further, there is no allegation

that Plaintiffs were denied the opportunity to act as the liquidator or that they communicated they demanded a particular receiver or liquidator. The only allegation made regarding their participation at all is the allegation that they choose to abstain from participating.

Instead, the Plaintiffs, along with the Defendants, voluntarily stipulated to the **process** of dissolution and wind up of the company's affairs which was memorialized by this Court's Order on May 17, 2012. All parties participated in the process and manner of liquidating the company's assets and its final sale.

C. PLAINTIFFS CREATE AN INHERENT CONFLICT OF INTEREST BY FAILING TO HIRE AN INDEPENDENT ATTORNEY TO REPRESENT THE ENTITY IN PURSUIT OF THE DERIVATIVE CLAIMS.

To the extent that Plaintiffs have any properly pled derivative claims, Plaintiffs create an inherent conflict of interest by proceeding to prosecute the claims for entity with the same attorneys as they have hired to represent their personal claims. Since Plaintiffs have sought to sue the Company while maintaining derivative claims on behalf of the Company, the Plaintiffs are adverse to the Company. They are not only economically adverse to the Company---thus disqualifying them as adequate representatives of the Company—they are adverse litigates in the same lawsuit. Rule 1.7 of The Idaho Rules of Professional Conduct specifically prohibits representation by an attorney of a client that is directly adverse to another. In this lawsuit, the Plaintiffs seek to represent the very entity that they are suing.

The Honorable Judge Robert J. Elgee addressed a very similar issue as recently as two years ago in *Vorse v. D&R Real Estate*, Case No. CV-2010-763, Idaho's Fifth Judicial District, Blaine County, *Order on Defendants' Motion to Dismiss*, filed March 14, 2015. Although Judge Elgee's decision is in no way binding on this Court, it may provide a useful and persuasive analysis to assist

this Court in considering and addressing this matter.

In the *Vorse* Case, Judge Elgee analyzed whether Ms. Vorse, who was being sued by Hourglass Development LLC in a separate lawsuit, could initiate a separate derivative lawsuit on behalf of the LLC. *Id.* Ms. Vorse had employed the same attorney to represent her individually and to represent her on behalf of the LLC in both lawsuits. *Id.* After reviewing the authorities regarding her standing to initiate the derivative action, Judge Elgee determined that Ms. Vorse could pursue the derivative action only if independent counsel was obtained. Judge Elgee noted:

> It is important here to determine whether Vorse has an irreconcilable conflict in both being sued by and suing the LLC and attempting to manage a derivative suit on behalf of the LLC. As long as truly independent counsel is selected to represent the plaintiff LLC and the defendant members in this derivative action, the court concludes any conflict of interest evaporates.
>
> ***
>
> Independent counsel for the LLC in the derivative suit must bear in mind that the LLC, and not Vorse, is their client. Their fiduciary duties are owed to the LLC and not to Vorse. This will be required to bear the litigation costs, including attorney fees, of any derivative action against LLC. *See* Idaho Code § 30-6-906. As that section also makes clear, any proceeds of the derivative suit are the property of the LLC alone, and no attorney fees are paid to the derivative plaintiff unless awarded by the district court. In addition, pursuant to I.R.C.P 23(f) the derivative action may not be compromised or dismissed without the approval of the court, and notice of such proposed action must be given to all shareholders. With these safeguards, the court is satisfied that Vorse is capable of adequately representing the minority shareholders on behalf of the LLC.

Vorse, at Pg.s 11-12.

To the extent that Plaintiffs have validly pled derivative claims, at a minimum, they must seek and pay for independent counsel to represent the company with regard to the derivative claims.

IV. CONCLUSION

This is and always has been a personal case between the two largest shareholders of the company. Plaintiffs attempt to portray the case as an effort to protect Source I which in turn would

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[5] A copy of *Vorse v. D&R Real Estate*, Case No. CV-2010-763, Idaho's Fifth Judicial District, Blaine A County

benefit ALL the members' interest is misguided. This case should be pled and tried as a direct action by Plaintiffs under Idaho Code § 30-6-901 instead of the disguise of protecting Source I and its members, especially since nearly all of Plaintiffs allegations are against Mr. Hodge, personally as liquidator.

Based on the arguments and authorities set forth above, the Defendants respectfully request that the Court dismiss Claims Two through Four and Six through Twelve of Plaintiffs Second Amended Complaint to the extent they are alleged as derivative claims with relief sought in favor of Source I.

DATED this 1st day of March, 2013.

DAVISON, COPPLE, COPPLE, & COPPLE, LLP

Ed Guerricabeitia, Of the Firm
Attorneys for Defendants/Cross-Defendants
Michael L. Hodge II and The Source, LLC

EVANS KEANE LLP

Judy L. Geier, Of the Firm
Attorneys for The Source Store, LLC

Order on Defendants' Motion to Dismiss, filed March 14, 2011, is attached hereto for the Court to review.

EVANS KEANE LLP

Judy L. Geier, Of the Firm
Attorneys for The Source Store, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____th day of February, 2013, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of March, 2013, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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3893-2
Research

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR BLAINE COUNTY

KIMBERLY VORSE MD, an individual, f.o.b. HOURGLASS DEVELOPMENT, LLC, an Idaho limited liability company,

Plaintiff,

vs.

D&R REAL ESTATE, INC., an Idaho corporation; DAVID McDONALD and RAINY McDONALD, husband and wife; PETER McDONALD and BETSY McDONALD, husband and wife; BRENT BROCKSOME and PATRICIA BROCKSOME, husband and wife; JOHN "JOHNNY" McDONALD and MONICA PASTOR, individually, and/or as husband and wife; SHANNON COOK, individually and as manager of CAILLIER PROPERTY MANAGEMENT, LLC, a California limited liability company, aka Caillier Riverwalk, LLC, an Idaho limited liability company; ZANE STERLING, an individual; MICHELE STERLING, an individual; and MATT THORNTON, an individual,

Defendants.

Case No.: CV-2010-763

ORDER ON DEFENDANTS' MOTION TO DISMISS

Appearances:

For Dr. Kimberly Vorse, Bruce Jones of Boise.

For Hourglass Development, LLC, and named individual defendant LLC members, Richard Greener and Thomas Lloyd of Boise.

EXHIBIT D

FACTS[1] AND PROCEDURAL HISTORY

Pending before the court is a Motion to Dismiss. The parties have briefed the issues. Oral arguments were presented on January 31, 2011, after which the court took this matter under advisement.

This case is a shareholder derivative action. Vorse is a member of an LLC known as Hourglass Development, LLC, along with all defendants named in this action and other parties named in Blaine County case number CV-2010-0005. There are eight (8) members in all. Vorse owns a 12.5% interest in the LLC. The original idea was that the LLC members would each purchase a townhome in a project with 11 townhomes. After the eight units were purchased, the LLC planned to sell the remaining three townhomes at a profit, for the benefit of all the members. Vorse contracted to buy one of the units. Things did not go as planned. Allegedly all the townhomes were not purchased by the members, and some, if not all, of the unpurchased units have been returned to the bank.

In case number CV-2010-0005, the prior non-derivative litigation, the LLC commenced an action against Vorse on January 4, 2010, alleging she failed to consummate the purchase of her unit, failed to pay capital contributions, allowed liens to be filed against the project, and that she owes the LLC $1.6 million or more. Vorse filed a counterclaim against the LLC and a Third Party Complaint against four of the LLC members, alleging breaches of fiduciary duty and breach of contract, among other things. Then, on October 10, 2010, Vorse filed this action as a

[1] These are not findings of fact by any means. They are the facts gleaned from the complaints in the two cases and from oral arguments. For the most part, these are allegations only at this point.

EXHIBIT D

separate shareholder derivative suit against all but one of the LLC members.[2] An Amended Complaint naming all of the other seven (7) members was filed on November 15, 2010.

In this derivative action Vorse alleges that all of the named members of the LLC who purchased townhomes received illegal distributions of $335,000 in the form of an actual purchase price less than the "market prices" previously provided by the LLC management. It further alleges that Zane Sterling's unit was represented to U.S. Bank N.A. as having a purchase price of $1.775 million. When that sale closed, $960,000 was paid to the Bank of the Cascades and $815,000 was allegedly paid to the LLC. Purportedly, David McDonald instructed U.S. Bank to pay $458,000 of the closing proceeds directly to Zane Sterling, allegedly to repay a loan from the LLC to Sterling. Vorse contends this violates the LLC's Operating Agreement. In addition, Vorse alleges Zane Sterling received a cash distribution of $335,000 within a few days of this purchase, also in violation of the operating agreement. Pursuant to Vorse's complaint, all of these transactions were illegal and were in violation of the operating agreement, and these distributions are the property of the LLC. According to the complaint in the derivative action, all of the named members of the LLC (all named members excepting Vorse) have received illegal distributions from the LLC, and/or distributions have been made which are in violation of the operating agreement. These distributions allegedly constitute benefits which have unjustly enriched several of the members, constitute breaches of fiduciary duties owed to the LLC, and/or have been ratified and approved by the other members of the LLC. Vorse seeks an order requiring all questioned distributions to be returned to the LLC.

[2] The only members not originally named in the derivative suit are John "Johnny" McDonald and Monica Pastor. Both are named by Vorse as third party defendants in the prior case, CV-2010-0005, and are now defendants in the derivative suit by virtue of the Amended Complaint.

EXHIBIT D

Bruce Jones of Boise represents Vorse in the original action Hourglass filed against Vorse and has filed this derivative action "for and on behalf of Hourglass Development, LLC." Because of the inherent nature of Jones' conflict of interest, the court determined that Jones could proceed as Vorse's counsel in order to resist this pending Motion to Dismiss, and that Jones had no conflict of interest unless or until this court allowed this derivative action to proceed. That is, at this juncture, Jones, on Vorse's behalf, is "attempting to proceed" on behalf of the LLC. The court and counsel for both sides recognize that if the court denies the present motion to dismiss, conflicts of interest *then* become real, and counsel will be realigned and/or replaced as necessary.

Presently before the court is a Motion to Dismiss pursuant to I.R.C.P. 12(b)(6), 23(f), and 41(b) filed by all named defendants in the derivative action. Defendants seek dismissal of this derivative action on the grounds that Vorse fails to meet the requirements of Rule 23(f) because she is not a "fair and adequate" representative of the LLC who can maintain this action.

GENERAL NATURE OF DERIVATIVE SUITS

The United States Supreme Court provides a good explanation of a derivative suit in *Koster v. Lumberman's Mut. Casualty Co.*, 330 U.S., 518, 522-23, 67 S.Ct. 828 (1947):

> The stockholder's derivative action is an invention of equity to supply the want of an adequate remedy at law to redress breaches of fiduciary duty by corporate managers. Usually the wrongdoing officers also possess the control which enables them to suppress any effort by the corporate entity to remedy such wrongs. Equity therefore traditionally entertains the derivative or secondary action by which a single stockholder may sue in the corporation's right when he shows that the corporation on proper demand has refused to pursue a remedy, or show facts that demonstrate the futility of such a request...The cause of action which such a plaintiff brings before the court is not his own but the corporation's. [The corporation] is the real party in interest and he is allowed to act in protection of its

> interest somewhat as a 'next friend' might do for an individual, because it is disabled from protecting itself.

Idaho has recently codified these same principles. *See* Idaho Code § 30-6-901 *et.seq.*

The underlying purpose of I.R.C.P. 23 is to prevent what is known as "strike suits." This was explained by the Supreme Court in *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 548, 69 S.Ct. 1221, 1226, 93 L.Ed. 1528 (1949):

> Equity came to the relief of the stockholder, who had no standing to bring civil action at law against faithless directors and managers... Unfortunately, the remedy itself provided opportunity for abuse, which was not neglected. Suits sometimes were brought not to redress real wrongs, but to realize upon their nuisance value. They were bought off by secret settlements in which any wrongs to the general body of share owners were compounded by the suing shareholder, who was mollified by payment from corporate assets. These litigations were aptly characterized in professional slang as 'strike suits.'

The plaintiff in a derivative suit assumes a fiduciary duty in the sense that he is suing, not on behalf of himself, but as a representative of all who are similarly situated. Due to the binding effect of derivative and class action litigation on absent class members, it is extremely important that the representative adequately represent all others similarly situated. "The interests of all in the redress of the wrongs are taken into his hands, dependent upon his diligence, wisdom, and integrity." *Id.* at 549, 1227.

Some of the dangers of strike suits have been addressed by court decisions, court rules, and statutory enactments. For example, Idaho Code § 30-6-906 makes clear that any proceeds of a derivative action belong to the limited liability company and not to the plaintiff. Rule 23 provides that the action may not be dismissed or compromised without the approval of the court and notice to the shareholders. With these precepts in mind, we turn to the question of whether Vorse is a fair and adequate representative of the shareholders of the LLC.

EXHIBIT D

GOVERNING LEGAL STANDARDS FOR THIS MOTION

Vorse argues that the court should construe the pending motion strictly pursuant to Rule 12(b)(6). That is, that Vorse is entitled to have all allegations taken as true and all intendments weighed in her favor, and that if any unpled facts are asserted, the court must construe this as a motion for summary judgment pursuant to the dictates of Rule 12(b). Defendant members assert this is solely a question of standing as to whether Vorse is entitled to proceed on behalf of the LLC, and that Rule 23(f) governs.

In a derivative action, standing is at issue. One of the threshold questions is whether the proposed plaintiff is a fair and adequate representative as required by Rule 23(f). The question of a stockholder's right to sue on behalf of the corporation is an equitable one, and no jury trial is required to determine the question. *Lewis v. Anderson,* 615 F.2d 778, 784 (9th Cir. 1979). The burden is on the defendants to show that Vorse is not an adequate representative. *Smallwood v. Pearl Brewing Co.,* 489 F.2d 579, 592 n.15 (5th Cir.); 7C C. Wright & A. Miller, Federal Practice and Procedure § 1833 (1986).

Plaintiff's standing to prosecute a derivative action can be challenged on the ground that Plaintiff does not fairly and adequately represent the interests of similarly situated shareholders in enforcing the corporations' rights. *Davis v. Comed, Inc.,* 619 F.2d 588, 592 (6th Cir. 1980). Standing is jurisdictional and may be raised at any time. *Martin v. Camas County,* Idaho Supreme Court Opinion No. 22, filed February 17, 2011, Docket No. 36605. On appeal, the question is whether the court abused its discretion in determining whether plaintiff qualified as a derivative plaintiff. *Larson v. Dumke,* 900 F. 2nd 1363, 1365 (9th Cir. 1989). An adequate representative must have the capacity to vigorously and conscientiously prosecute a derivative suit and be free from economic interests that are antagonistic to the interests of the class. *Id.*

EXHIBIT D

at1367. The "class of shareholders" the proposed plaintiff must adequately represent are those "shareholders or members similarly situated in enforcing the right of the corporation or association." I.R.C.P. 23(f).

Courts look at certain factors to determine adequacy of representation, and whether the proposed plaintiff is antagonistic to the interests of the class: (1) indications the plaintiff is not the true party in interest; (2) the plaintiff's unfamiliarity with the litigation and unwillingness to learn about the suit; (3) the degree of control exercised by the attorneys over the litigation; (4) the degree of support received by the plaintiff from other shareholders; (5) the lack of any personal commitment to the action on the part of the representative plaintiff; (6) the remedy sought by the plaintiff; (7) the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action itself; and (8) plaintiff's vindictiveness toward the defendants. These factors are intertwined or interrelated, and it is frequently a combination of factors which leads a court to conclude that the plaintiff does not meet the requirements of Rule 23. *Davis v. Comed, Inc.*, 619 F:2d 588, 593-594 (6th Cir. 1980); *Larson v. Dumke*, 900 F.2d 1363, 1367 (9th Cir. 1990).

ANALYSIS AND CONCLUSIONS

Defendants argue Vorse has an inherent conflict of interest that cannot be overcome because she has prior litigation pending against the LLC. In case CV-2010-0005, the LLC has sued Vorse for monetary damages, and Vorse has filed a pending counterclaim seeking monetary damages. Defendants contend Vorse cannot maintain an action against the corporation while at the same time purporting to represent the LLC in a suit against its officers and directors. In

response, Vorse argues that truly independent counsel can be found to represent the corporation in the derivative action, and any conflict evaporates.

In some situations, pending litigation between the derivative plaintiff and the corporation has been found, in combination with other factors, to be antagonistic to the interests of the class. For example, in *Guenther v. Pacific Telecom, Inc.*, 123 F.R.D. 341 (1998), a federal district court determined Plaintiff Stetson's private cause of action, wherein he claimed a large investment banking fee, was sufficient to disqualify him as an adequate representative of other similarly situated shareholders. Stetson claimed his investment fee as a result of one corporation's purchase of 51% of the stock in the other. The court noted that Stetson acquired an interest in one of the corporations only after his personal attempts to collect the fee were unsuccessful. Shortly before a merger, Stetson purchased five shares of stock for $22.50. Later, he sought standing as a derivative plaintiff in order to enforce claims that one corporation had misled the other in the course of these proceedings. The court concluded Stetson's own interests would be to use the derivative suit as ongoing leverage in negotiating a settlement of his investment banking claim and that he had "outside entanglements" making it likely that the interests of the other stockholders would be disregarded in the management of the derivative suit.

In *Blum v. Morgan Guaranty Trust Company of New York*, 539 F.2d 1388 (5th Cir. 1976), Blum was notified before any suits were filed that he was in default to Morgan Guaranty on a note in excess of $2,000,000 and that litigation would ensue if he failed to pay. Thereafter, he purchased stock in Morgan Guaranty and filed suit before the bank filed its own action to collect their note. In Blum's suit, he filed a derivative action claiming the bank and the Federal Reserve System were violating the National Banking Act, 12. U.S.C. §21, *et seq.* The district court ruled that Blum was attempting to advance "purchased grievances," and that one who buys stock with

EXHIBIT D

knowledge of alleged wrongs could not maintain a derivative action even if the wrongs were continuing and persisted after Blum had purchased his stock. The district court determined that the timing of Blum's stock purchase was an attempt to obtain leverage in negotiating his own huge personal indebtedness to the bank. The Court of Appeals of the 5th Circuit affirmed the district court, stating that although a plaintiff is not necessarily disabled to bring suit simply because some of his interests extend beyond that of the class, the court may take into account outside entanglements that render it likely that the representative may disregard the interests of the other class members. *Id.* at 1390.

Davis v. Comed, Inc., 619 F.2d 588 (6th Cir. 1980) is another case in which a shareholder was disqualified from adequately representing the interests of a minority. Davis sought on behalf of himself and other shareholders to rescind Comed's sale of a hospital property and recover damages, asserting fraud and lack of authority to sell the property, among other improprieties. The sale was overwhelmingly ratified by Comed's shareholders and the shareholders of its parent company. Comed received adequate value for the sale. The only opposition votes were a few votes cast by Davis and his cohorts, who were interested in acquiring the hospital property for themselves and developing it for their own benefit. The court concluded that there were extrinsic factors which "render it likely that the representative may disregard the interests of the class members." *Id.* at 593. *See also Hornreich v. Plant Industries, Inc.*, 535 F.2d 550 (9th Cir. 1976); *G.A Enterprises, Inc., v. Leisure Living Communities, Inc.*, 66 F.R.D.123 (D.Mass 1974), *aff'd* 517 F.2d 24 (1st Cir. 1975); *Robinson v. Computer Servicecenters, Inc.*, 75 F.R.D. 637 (1976).

In many of these actions, the court considered that the derivative plaintiff's stake in the outcome of the derivative suit was *de minimis*, especially when compared to the amount involved

EXHIBIT D
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in the other claims. In *G.A. Enterprises,* the court noted that the derivative action threatened the corporate managers with individual liability, as here, and thus, it provided leverage that could affect how doggedly the corporate managers would pursue the derivative plaintiff in the other suits. As such, the derivative suit would serve interests beyond and contrary to those of the other minority shareholders, and it was disallowed by the court.

Since Vorse is the only minority shareholder, and there are no others similarly situated, she represents a class of one minority shareholder against the other seven (7) members of her LLC. All the parties are named litigants. There is no danger, therefore, that the derivative suit would serve interests beyond and contrary to the other minority shareholders—there are none. The only other apparent danger is that noted above: Vorse could be pursuing her own interests with the derivative action. However, as there are no other minority shareholder interests to consider, and the individual directors and LLC members have their own incentives (as a corporate body) in the separate litigation, the court considers that a minor factor.

The court is also unable to conclude that Vorse's stake in the derivative action is *de minimis.* She allegedly owns a 12.5% interest in the LLC. If successful, the derivative action could result in recoupment of $335,000 from several LLC members. Although the derivative action might enhance Vorse's settlement possibilities significantly in her private litigation with the LLC, the court cannot conclude that this factor alone keeps her from being an adequate representative. As all parties are, or would be, represented in both actions, there is no danger that any party will settle to the detriment of an unrepresented minority interest.

Because there are no minority interests to consider here, the court need not analyze the eight factors set forth in *Davis v. Comed* in order to determine whether Vorse's interests are antagonistic to the class. In any event, consideration of those eight (8) factors does not lead the

court to any conclusions that Vorse's interests are antagonistic to those similarly situated. The LLC and its seven (7) other members also argue that a minority shareholder cannot operate as a "class of one." *Larson v. Dumke* concluded, however, that a single shareholder may bring a derivative suit. 900 F.2d at 1368. In *Larson,* as here, there were allegations that all other shareholders except the derivative plaintiff benefitted from wrongful conduct of the corporation. The 9th Circuit found Larson to be an adequate representative of the minority. More specifically, they concluded that Larson was not similarly situated with the other shareholders, that each non-defendant shareholder had an economic interest in supporting the current management, and that "lack of support" for the derivative suit did not indicate Larson was an inadequate representative. In addition, although Larson's complaint alleged parallel individual and derivative claims in the same cause of action, the 9th Circuit noted that "Larson's claims as an individual do not command our attention on this appeal. Similarly, we do not reach the merits of his derivative claims." Thus, although Larson sought individual relief against the corporation, that was not a disqualifying factor. *Larson* is on point.

Although most of the factors noted in *Comed v. Davis* were to be considered in determining whether a derivative plaintiff's interests are antagonistic to the minority class, it is also important to consider any other factors that bear upon whether Vorse can adequately represent the minority interests of the shareholders on behalf of the LLC. It is important here to determine whether Vorse has an irreconcilable conflict in both being sued by and suing the LLC and attempting to manage a derivative suit on behalf of the LLC. As long as truly independent counsel is selected to represent the plaintiff LLC and the defendant members in this derivative action, the court concludes any conflict of interest evaporates. Bruce Jones may continue to represent Vorse in her individual claims and defenses against the LLC, and Greener Burke

Shoemaker P.A. may continue to represent the LLC against Vorse. Independent counsel for the LLC in the derivative suit must bear in mind that the LLC, and not Vorse, is their client. Their fiduciary duties are owed to the LLC and not to Vorse. This will be true even though Vorse will be required to bear the litigation costs, including attorney fees, of any derivative action against the LLC. *See* Idaho Code § 30-6-906. As that section also makes clear, any proceeds of the derivative suit are the property of the LLC alone, and no attorney fees are paid to the derivative plaintiff unless awarded by the district court. In addition, pursuant to I.R.C.P 23(f) the derivative action may not be compromised or dismissed without the approval of the court, and notice of such proposed action must be given to all shareholders. With these safeguards, the court is satisfied that Vorse is capable of adequately representing the minority shareholders on behalf of the LLC.

For the reasons set forth above, the Motion to Dismiss is Denied. Vorse may proceed on behalf of the LLC with her shareholder derivative action. Independent counsel must be found to represent the plaintiff LLC and the defendant members in this derivative action.

CHOICE AND DUTIES OF INDEPENDENT COUNSEL

Although this portion of this decision extends beyond the motion to dismiss, it is important for all the parties, and independent counsel as well, that the court define the duties and expectations of independent counsel to the extent possible to avoid needless return visits to the court and to insure adequate representation for the LLC. It is imperative in this shareholder derivative action that truly independent counsel be chosen and that they function as such. This is an unusual case in which counsel for the LLC in the derivative action will be required to

navigate a narrow channel wherein they owe fiduciary duties to their client (Hourglass), not to the person that employs and pays them (Vorse).

It is not the court's duty to choose counsel. However, in the course of employment both independent counsel and the parties need to have a clear idea of their functions and responsibilities. In pursuing a shareholder derivative action on behalf of a minority shareholder, counsel will be proceeding *individually* against the very same people that make up the officers and directors of the LLC. It is to be expected that independent counsel will receive differing advice and information both from counsel for the LLC and from Vorse on how to proceed with the derivative action, whether it has merit, and/or whether to settle, and on what terms, etc. The court sees no problem if this occurs. The difficulty will come for independent counsel in determining the proper course of action for the LLC in the derivative suit when it has no clear direction, as independent counsel has no clear master. **Neither Vorse nor the LLC members, either individually or as a corporate body, will be able to steer independent counsel away from its duties, which are owed solely to the LLC by virtue of the derivative action, and none of its members individually, including Vorse.** Independent counsel must realize who will be paying their fee. Pursuant to I.C. § 30-6-906, unless there is a recovery in the derivative suit there is virtually no chance the LLC will be paying their fee. In addition, the extent of their fee, if any, to be paid by the LLC is dependent upon court approval.

Accordingly, the choice of independent counsel is important. It should be, though the court will not require it to be, the product of collaboration and input from both sides. The LLC may object to the choice if good cause exists.

One of the provisions of I.R.C.P. 23(f) reads: "The derivative action may not be maintained if it appears that the plaintiff does not represent the interests of the shareholders or

EXHIBIT D

members similarly situated in enforcing the right of the corporation or association." The court reads this to mean that Vorse's duties to provide adequate representation are ongoing. As independent counsel has no specific and identifiable master with which it can consult and cannot and should not undertake any course of action that is not in the best interest of the LLC, the situation may arise where independent counsel is instructed or requested by Vorse, the party paying their fee, to act in a manner which counsel determines is not in the best interest of the LLC. For example, Vorse may instruct independent counsel to proceed with the shareholder litigation, or portions thereof, against the individual members even though independent counsel is of the opinion that particular claims have no merit. Counsel is not obligated to follow Vorse's instructions if they may be adverse to the interests of the LLC. In that event, counsel is instructed to bring the matter back to the court for resolution. The court recognizes that in the proper situation, such a matter might have to be by ex parte application to the court.

IT IS SO ORDERED.

DATED this 8 day of March, 2011

Robert J. Elgee
District Judge

EXHIBIT D
000566

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of March, 2011, I caused to be served a true copy of the foregoing ORDER, document by the method indicated below, and addressed to each of the following:

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Attorneys for The Source Store, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **AMENDED AFFIDAVIT OF ED GUERRICABEITIA IN SUPPORT OF JOINT MOTION TO DISMISS DERIVATIVE CLAIMS**
Cross claims and counterclaims.	

STATE OF IDAHO)
) ss
County of Ada)

ED GUERRICABEITIA, being first duly sworn, deposes and says:

I am one of the attorneys for the Defendants, The Source, LLC ("Source 2") and Michael L. Hodge, II ("Hodge") in this matter and make this Affidavit based upon my own personal knowledge.

Attached hereto and incorporated herein is a true and correct REDACTED copy of the Partners' Allocation Percentages of Source I, marked as Exhibit G.

DATED this 4th day of March, 2013.

Ed Guerricbaeitia

SUBSCRIBED AND SWORN before me, a Notary Public, this 4th day of March, 2012.

AYN McMILLAN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise

My commission expires: 6/18/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2013, a true and correct copy of the foregoing document was served by either first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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2011 PARTNERS' ALLOCATION PERCENTAGES PAGE 1

THE SOURCE STORE, LLC 03-0463732

Partner Number	Partner Name	Partner Identification Number	Partner Percentage of Profit Sharing	Partner Percentage of Loss Sharing	Partner Percentage of Ownership of Capital
1	MICHAEL L. HODGE II	[redacted]	39.636000	39.636000	39.636000
2	DONNELLY PREHN		37.974000	37.974000	37.974000
5	DWIGHT BANDAK		10.660000	10.660000	10.660000
6	GEORGE MICHAEL BROWN		4.940000	4.940000	4.940000
7	CHRIS CLAIBORNE		6.790000	6.790000	6.790000
		TOTALS	100.000000	100.000000	100.000000

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

OBJECTION AND RESPONSE TO JOINT MOTION TO DISMISS DERIVATIVE CLAIMS

ORIGINAL

OBJECTION AND RESPONSE TO JOINT MOTION TO DISMISS DERIVATIVE CLAIMS

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

TABLE OF CONTENTS

I. INTRODUCTION

After several months of very intensive written discovery, and a recent week of depositions, which illustrated in abundance Hodge's disloyal and dishonest conduct in managing the liquidation of The Source Store, LLC ("Source 1"), on March 1, 2013, Source 1, The Source, LLC ("Source 2") and Hodge (collectively, the "Defendants") filed a Joint Motion to Dismiss Derivative Claims ("Joint Motion"). The Joint Motion is untimely, prejudicial and without factual or legal support. It is clearly interposed in order to harass the Plaintiffs Don Prehn and Dwight Bandak and their counsel as they prepare for trial, scheduled for April 1, 2013. For the following reasons, the Plaintiffs respectfully request that the Court strike the Joint Motion or, in the alternative, deny the motion in its entirety. In addition, under the circumstances, the Plaintiffs request an award of the costs and attorney fees associated with responding to the Joint Motion.

II. OBJECTION

A. The Defendants' Motion Is Untimely and Prejudicial.

The first, and most obvious, deficiency associated with the Defendants' Joint Motion is that it is untimely and does not conform to the Court's scheduling order. Pursuant to Idaho Rule of Civil Procedure 16(b), the court is to issue a scheduling order. A scheduling order may be modified only for "good cause." IDAHO R. CIV. P. 16(b). Pursuant to Rule 16, on September 25, 2012, the Court issued an Order Governing Proceedings and Setting Trial (the "Rule 16 Order"), which Order required all dispositive motions be filed and noticed such that they would be heard on or before February 1, 2013, and required that all other pre-trial motions be filed on or before February 1, 2013.

Not only is the Defendants' Joint Motion (which includes defenses and affirmative defenses heretofore unasserted) untimely, the Defendants failed to seek leave of the Court to amend the Court's Rule 16 Order. The Ninth Circuit has held that where a party makes an untimely motion, without seeking modification of the scheduling order, the district court may deny the motion based on untimeliness alone. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608-09 (9th Cir. 1992) (citing *Jauregui v. City of Glendale*, 852 F.2d 1128, 1133-34 (9th Cir. 1988); *U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff*, 768 F.2d 1099, 1104 (9th Cir. 1985)). Idaho law appears to be in accord. *See Maroun v. Wyreless Sys.*, 141 Idaho 604, 613, 114 P.3d 974, 973 (2005). Accordingly, the Court should strike the Defendants' Joint Motion.

Even if the Court determines that it will treat Defendants' Joint Motion as a request for modification of the Rule 16 Order, Defendants have failed to make the required showing necessary to establish "good cause" under Rule 16(b). The evaluation of "good cause" under Rule 16(b) is not coextensive with the liberal standards of Rule 15 related to timely amendment of the pleadings. *Johnson*, 975 F.2d at 609 (quoting *Forstmann v. Culp*, 114 F.R.D. 83, 85 (M.D.N.C. 1985)) ("A court's evaluation of good cause is not coextensive with an inquiry into the propriety of the amendment under . . . Rule 15."). "Unlike Rule 15(a)'s liberal amendment policy which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party, Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the amendment." *Id.*; *see also Robinson v. Twin Falls Highway Dist.*, 233 F.R.D. 670, 672 (D. Idaho 2006) (Winmill, C.J.) ("The relevant inquiry under Rule 16(b) is the diligence of the party seeking the amendment and not any potential prejudice to the opposing party.").

More specifically, "the Court must evaluate 'the moving party's diligence in attempting to meet the case management order's requirements.'" *Robinson*, 233 F.R.D. at 672 (quoting *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir. 2001)). When a moving party submits an untimely motion under the scheduling order, "[a]ny prejudice to the opposing party can be an additional reason to deny a motion to amend, but it is not the main focus of the Court's inquiry." *Id.* (citing *Johnson*, 975 F.2d at 609). "***If the moving party 'was not diligent, the inquiry should end.***'" *Id.* (emphasis added).

In this case, the Defendants do not even attempt to establish good cause. The Defendants do not set forth any "new facts" they have discovered to support the new defenses asserted in their Joint Motion. Moreover, they do not explain what triggered recognition of the issues they seek to now raise with the Court. In the exercise of reasonable diligence, the Defendants and their two separate and competent counsel knew or should have known that the Plaintiffs asserted several derivative claims, as well as the posture of each party in this litigation. *See* Second Amended Complaint dated June 29, 2012. Knowing the facts that form the basis for a motion or amendment prior to the deadlines set forth in the Rule 16 Order "precludes a finding of due diligence." *See Robinson*, 233 F.R.D. at 673. Carelessness is not a valid excuse. *Johnson*, 975 F.2d at 609 ("carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief"). The Defendants can present no legitimate reason for their extreme delay, much less establish good cause to modify the scheduling order to allow consideration of what amounts to an untimely dispositive motion and motion to amend the pleadings.

Furthermore, the prejudice to the Plaintiffs will be enormous should the Court consider the Joint Motion and grant any of the requested relief. The Joint Motion alone has

already greatly interfered with the Plaintiffs' preparation for a trial that is less than a month away. Instead of preparing for trial, Plaintiffs' counsel has been tasked with addressing the alleged jurisdictional defenses and objections of the Defendants, which defenses and objections were fully known to the Defendants and should have been asserted and addressed at the outset of the case. Further, the Plaintiffs have proceeded with expensive discovery in order to prosecute the derivative claims at issue, relying on the fact that Source 1 asserted no objection thereto. As has been made clear to the Court and all parties from its inception, this case is largely about the harm Hodge has done to Source 1 and its membership for his own benefit, and for the benefit of Source 2 and its members. Now, on the eve of trial, Source 1 has changed its position of neutrality on the derivative claims and appears to argue that the claims should therefore either be dismissed or the Plaintiffs should be saddled with the expense already incurred to prosecute such claims, in addition to the expense to retain and prepare separate counsel.

For the foregoing reasons, the Plaintiffs respectfully object to the untimely Joint Motion and request that the Court strike the same.

B. The Defendants' Motion Fails to Comply with the Idaho LLC Act.

The Plaintiffs' second objection to the motion relates again to the lack of diligence on the part of the Defendants. Source 1 may not simply move to dismiss derivative claims on the eve of trial because it does not approve of the derivative plaintiffs, as it has here. Source 1 has maintained its position of neutrality on the derivative claims throughout the litigation. Until March 1, 2013, Source 1 never objected to the Plaintiffs' right to bring a derivative action. That position of neutrality on the derivative claims must be viewed as an approval of and consent to the Plaintiffs to prosecute such claims. *See Kaplan v. Peat, Marwich, Mitchell & Co.*, 540 A.2d 726, 731 (Del. 1988) ("Because of the inherent nature of the derivative

action, a corporation's failure to object to a suit brought on its behalf must be viewed as an approval for the shareholders' capacity to sue derivatively. We hold, therefore, that when a corporation chooses to take a position in regards to a derivative action asserted on its behalf, it must affirmatively object to or support the continuation of the litigation.").

In fact, Idaho law provides a very clear procedure for an LLC to exercise its business judgment related to derivative claims in the event it elects to play an active role in the litigation. *See* IDAHO CODE § 30-6-905. In doing so, Source 1 bears an affirmative burden of appointing a special litigation committee, investigating the claims, recommending pursuit or dismissal in good faith, and proving that the committee selected to investigate the claims was disinterested and independent. *See id.* at sub. (5). Not only have the Defendants failed to demonstrate good cause for their substantial and prejudicial delay, Source 1 has utterly failed to show that it has met the requirements of Section 30-6-905 before recommending dismissal to the Court.

The Defendants' attempted end-run around a very clear statutory procedure for the timely dismissal of derivative claims should not be countenanced by the Court at this stage of the case.

III. ARGUMENT

After failing to timely raise affirmative defenses, object to the derivative claims at issue or otherwise take an active role in the litigation, and after allowing the Plaintiffs to incur the substantial costs of developing such derivative claims, the Defendants now inappropriately seek dismissal of such claims on so-called "standing" grounds at the eleventh hour. In a derivative lawsuit there are three primary requirements for a member or shareholder to maintain such a cause of action: (1) proper standing; (2) compliance with the demand requirement, or

demand futility; and (3) fair and adequate representation of the interests of similarly situated shareholders or members. *See* IDAHO CODE §§ 30-6-902 – 904; IDAHO R. CIV. P. 23(f). They are three separate, but related, inquiries and do not, as the Defendants suggest, require dismissal of the derivative claims in this case.

A. The Plaintiffs Have Standing.

The Defendants correctly assert that standing is a jurisdictional issue. It is a "preliminary question to be determined by this Court before reaching the merits of the case." *Young v. City of Ketchum*, 137 Idaho 102, 104 (2002). "The doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Miles v. Idaho Power Co.*, 116 Idaho 636, 641 (1989). To satisfy the standing requirement, "litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury." *Id.* The alleged injury must be to the litigant whose standing is at issue. *Troutner v. Kempthorne*, 142 Idaho 389, 392 (2006).

Proper standing in a derivative action is governed by statute and generally requires that a plaintiff be a shareholder at the time of the challenged transaction and throughout the litigation. *See Taylor v. McNichols*, 149 Idaho 826, 847 (2010); IDAHO CODE § 30-6-903.[1] Standing does not, as the Defendants contend on pages 5 and 6 of their memorandum, require a derivative plaintiff to be disinterested, nor to prove that he is disinterested. The "disinterested" inquiry is part of the demand and demand futility analysis, and such inquiry is applied to a board

[1] In a derivative action under the Idaho Uniform Limited Liability Company Act, the traditional "contemporaneous ownership" rule requiring ownership at the time of the challenged transaction has been abandoned in light of the closely held nature of most LLCs. *See* IDAHO CODE § 30-6-903, Uniform Law Comments.

of directors, a special litigation committee, or, as in this case, the manager of the LLC, not the derivative plaintiff.

In this case, there is no question that the Plaintiffs, Prehn and Bandak, were and are members of Source 1 and therefore meet the statutory standing requirements set forth in Idaho Code Section 30-6-903.

B. Demand upon Source 1 Management Was Futile.

In their untimely Rule 23(f) motion, the Defendants raise the affirmative defense that the Plaintiffs did not appropriately make demand upon Source 1 management or adequately plead demand futility. A member of an LLC may maintain a derivative action if the member makes demand to enforce the rights of an LLC upon the manager of a manager-managed LLC, or if such demand would be futile. *See* IDAHO CODE § 30-6-902. The complaint of a member of an LLC must state with particularity the date and content of his or her demand and the response by the manager or other members or, if a demand was not made, the reasons a demand would be futile. *See* IDAHO CODE § 30-6-904.

1. The Plaintiffs alleged the reasons for futility with particularity.

In this case demand was futile, and demand futility was pleaded with particularity. Hodge was, and remains, the sole manager of Source 1. *See* Complaint ¶ 15. Hodge, Brown and Claiborne, representing a majority of the membership interests, appointed Hodge to liquidate Source 1 notwithstanding Hodge's prior statements that he did not intend to process any existing purchase orders, that he was absolved of any responsibility or duty to Source 1 as an employee or under his noncompete agreement with Source 1, and over the objection and abstention of Prehn and Bandak. *See* Complaint ¶¶ 44-46. Immediately thereafter, Hodge, Brown and Claiborne formed Source 2 in order to compete with, and ultimately succeed to, the business of Source 1,

without any consideration paid to the 49% minority members Prehn and Bandak. *See* Complaint ¶¶ 50-55. Hodge was the sole manager of Source 2, with fiduciary duties thereto, and at the same time the manager and liquidator of Source 1, with the same fiduciary duties. *See id.* The foregoing specific factual allegations in the Complaint demonstrate that a demand upon Hodge—Source 1's manager—by the Plaintiffs to enforce Source 1's rights by a cause of action against Hodge, Source 2 and the majority interests of Source 1, was futile. *See, e.g., Ryan v. Old Veteran Mining Co.*, 37 Idaho 625 (1923); *In re Ferro Corp.*, 511 F.3d 611 (6th Cir. 2008); *Cathedral Estates, Inc. v. Taft Realty Corp.*, 228 F.2d 85, 88 (2d Cir. 1955) (demand "presumptively futile" where directors and controlling shareholders are "antagonistic, adversely interested, or involved in the transaction attacked").

2. The Defendants are estopped from raising the affirmative defense of failure to make demand upon Source 1.

While the Defendants' motion is a bit unclear, it appears as if the Defendants seek to assert the affirmative defense of failure to make demand upon Source 1. Such issue has not been litigated in this case to date as the Defendants only raised the defense, if at all,[2] in their untimely motion filed March 1, 2013. The Plaintiffs have certainly not had the opportunity to conduct discovery or respond to such defense. As discussed *supra*, Source 1 has taken a neutral stance related to the derivative claims until just before filing the instant motion, and in

[2] Even in the Defendants' submissions on March 1, 2013, they do not affirmatively state that Hodge was disinterested and independent, or argue that demand was not actually futile. Rather, it appears to be a disingenuous and untimely complaint about the manner in which the Plaintiffs claimed futility and, more obviously, it appears to be an attempt to distract the Plaintiffs from trial preparation by filing a motion that should have been filed months ago, if at all. In other words, not only do the Defendants fail to explain their extremely prejudicial delay, they fail to actually rebut or deny futility. The Defendants' arguments regarding futility amount to procedural gamesmanship and warrant little, if any, consideration by the Court at this stage of the case.

combination with Source 1's failure to raise the "demand failure" affirmative defense, the Plaintiffs appropriately prepared to try the derivative claims because futility had not been affirmatively challenged. The Defendants may not now, after lying in wait for months while the Plaintiffs incurred the expense of discovery associated with the derivative claims, bring a Rule 23(f) motion and elect to take a position on demand futility and adequate representation related to the derivative claims.

C. Plaintiffs Adequately Represent Similarly Situated Members.

1. The Plaintiffs are representative of and, in fact, comprise the entirety of the members who are similarly situated in enforcing Source 1's rights.

The Defendants argue that because the Plaintiffs are not "disinterested" and because Prehn pursues an individual cause of action related to his loan to the company, the Plaintiffs do not adequately represent similarly situated members in enforcing the rights of Source 1 under Rule 23(f). That argument does not find support in well-established law.

First, contrary to the Defendants' repeated suggestions in their brief, the Plaintiffs do not have to be "disinterested" to prosecute derivative claims. One does not have to be "disinterested" to be an adequate representative of similarly situated members, and the "disinterested" test simply does not apply to the Plaintiffs. The "disinterested" test applies to those controlling Source 1 when the Court examines Source 1's exercise of its business judgment or, in this case, its lack thereof. The test is whether the derivative plaintiff adequately represents the interests of the similarly situated members. In this case, the Plaintiffs comprise the **entirety** of the class of similarly situated members. The Plaintiffs are the only members not involved in the creation of Source 2 to compete with Source 1, and thereafter to utilize the assets of Source 1, both liquidated and unliquidated, for Source 2's benefit. Source 2 is a named defendant in the

instant lawsuit. The interests of the majority of Source 1's membership—Hodge, Claiborne and Brown—are clearly not aligned with the interests of the Plaintiffs because such majority membership is also the entirety of Source 2's membership. If, as the Defendants appear to suggest, all members must be aligned and represented by a "disinterested" plaintiff, the utility of a derivative suit would be completely undermined and minority members and shareholders would be left without the ability to seek redress,[3] as has been widely recognized:

> [Federal Rule 23.1] provides that plaintiff must adequately represent "shareholders or members who are similarly situated . . . ." However, Rule 23.1 also requires that the shareholder be enforcing a right of the corporation that it refuses to enforce, a decision typically arrived at through a vote of its stockholders. Applied literally, these two provisions appear contradictory: plaintiff is supposed to represent the shareholders but the objective of the litigation coincides with the desire of only a minority and is contrary to the will of the rest of the stockholders. **Obviously, if this type of antagonism were treated as demonstrating inadequacy of representation, it could result in the dismissal of virtually all derivative suits.**
>
> **Thus, the second sentence of Rule 23.1(a) must be read as only requiring plaintiff to be an adequate representative for those "similarly situated" shareholders—namely, the minority stockholders.**

7C WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE 2D § 1833 (2007) (*emphasis added*).

Clearly the Plaintiffs adequately represent the interests of "similarly situated" members because they comprise the entire aggrieved minority class.

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[3] The instant case is a perfect example of this concept. The harm Hodge and Source 2 did to Source 1 constitutes an injury to all Source 1 members. The Plaintiffs may not maintain a personal cause of action against Hodge and Source 2 related to their conduct because of this fact. *See* IDAHO CODE § 30-6-901. On the other hand, the majority membership of Source 1—Hodge, Brown and Claiborne—would certainly not vote to redress such injury because their injury as Source 1 members is eliminated or fully offset as a result of their ongoing and beneficial interests in Source 2.

2. Prehn is not precluded from maintaining a direct claim against Source 1.

The Defendants also appear to rely upon the fact that there are both direct and derivative claims asserted in this case as evidence of economic antagonism.[4] There exists no Idaho authority precluding the maintenance of both a direct and a derivative action against a limited liability company. Clearly, the Idaho Limited Liability Company Act contemplates both, depending upon whether the rights and interests specific to a given member are at issue or the rights and interests of that member as a result of his membership in the LLC are at issue. *See* IDAHO CODE §§ 30-6-901 – 902. In this case, Prehn has filed a personal cause of action against Source 1 because he, individually, loaned money to Source 1 and Source 1 owed him back salary. Prehn and Bandak have filed several derivative claims arising out of their membership in Source 1 because Hodge has looted Source 1 during dissolution for his own benefit and for the benefit of Source 2. The plain and unambiguous language of the pertinent statutes does not preclude the maintenance of both causes of action. *See id.* In fact, the Idaho Supreme Court has stated that **"derivative and individual actions may both grow out of the same wrong."** *McCann v. McCann*, 152 Idaho 809, 817 (2012) (*emphasis added*).

The mere fact that Plaintiffs' claims allege damage to both Source 1 members and Prehn, individually, does not create a conflict such that Prehn could not be expected to act in the interests of the other similarly situated shareholders in the prosecution of the derivative claims "because doing so would harm [his] other interests." *See* 7C WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE 2D § 1833 (2007); *Ohio-Sealy Mattress Mfg. Co. v. Kaplan*, 90

[4] Although the orders of voluntary dismissal have not yet been entered, the parties have narrowed the claims at issue in this case and there remains only one individual or direct claim against Source 1, which relates to Hodge/Source 1's refusal to honor Prehn's loan and back salary agreements with Source 1.

F.R.D. 21, 25 (N.D. Ill. 1980). It is well-settled that shareholders have the right to bring direct and derivative actions simultaneously. *J.I. Case Co. v. Borak*, 377 U.S. 426, 431 (1964); *Moffatt Enter., Inc. v. Borden Inc.*, 807 F.2d 1169, 1176 (3d Cir. 1986); *Yamamoto v. Omiya*, 564 F.2d 1319, 1326 (9th Cir. 1977); *see also* 19 AM. JUR. 2D *Corporations* § 1934 ("a shareholder may bring a derivative action and an individual claim at the same time if he or she has suffered a different injury than the other shareholders"). A "conflict" that exists in cases where a plaintiff brings both derivative and direct claims is generally theoretical rather than real. *See First Am. Bank & Trust by Levitt v. Frogel*, 726 F. Supp. 1292, 1298 (S.D. Fla. 1988); *In re TransOcean Tender Offer Sec. Litig.*, 455 F. Supp. 999, 1014 (N.D. Ill. 1978).

In *Natomas Gardens Investment Group, LLC v. Sinadinos*, 2009 WL 1363382 (E.D. Cal. 2009), the court encouraged consideration of "outside entanglements making it likely that the interests of the other shareholders will be disregarded in the management of the suit" and encouraged courts to look behind the "surface duality of the two types of actions and allow them to proceed together unless an actual conflict emerges." *Id.* at *15-16. A claim-by-claim analysis demonstrates that Prehn suffered a different injury than others in light of the breach of the loan and back salary agreements, which comprises the individual claim, but it is also clear that Source 1's membership, including both Prehn and Bandak, suffered injuries as a result of Hodge's dishonesty and misconduct during the liquidation of Source 1. Notwithstanding their extensive briefing, the Defendants fail to articulate anything more than a theoretical conflict. They have set forth no set of circumstances wherein the Plaintiffs' ability, willingness or incentive to faithfully prosecute the derivative claims asserted will be compromised as a result of Prehn's individual cause of action.

The fact that Prehn holds an individual action against Source 1 pursuant to Idaho Code Section 30-6-901 does not mean that he may not be part of a class of Source 1 members aggrieved by the conduct of Hodge and Source 2, and the Defendants offer no support for such position.[5]

3. The derivative claims are properly pleaded as such, and are not individual or personal claims of Prehn.

Without offering any support, the Defendants also allege that "it is clear that Prehn through the disguise of a derivative claim is seeking to recover **his** damages against Hodge, personally, not that of other members." *See* Memorandum at 6. The derivative claims, the Defendants argue, are instead personal or direct claims against Hodge and Source 2, not derivative claims against Hodge and Source 2. The Defendants, however, cannot and do not explain that contention. For example, under the Operating Agreement, Source 1 is obligated to pay the reasonable attorney fees to defend Hodge, the manager of Source 1, in certain lawsuits alleging personal liability for the conduct of management (assuming Hodge gave timely and appropriate notice to the membership, which he did not). If the Plaintiffs prove liability and disabling conduct (as defined in the Operating Agreement) for Hodge's self-dealing, it will arise because of Hodge's breach of his duty to Source 1, not Prehn, and Hodge will be personally liable to Source 1 to remedy not only the breach of his duty, but also for the fees paid by Source 1 to defend his disabling conduct. In such an event, Source 1 will receive relief from Hodge. Hodge's liability would not be solely to Prehn because his fiduciary duties do not run solely to Prehn. His liability will be shared among the entire membership.

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[5] Notably, even the Order on Defendants' Motion to Dismiss authored by Judge Elgee and attached to the Defendants' briefing supports the Plaintiffs' position on the issue of adequate class representation.

As another example, if the Plaintiffs successfully prove unjust enrichment of Source 2, the relief provided will be paid to Source 1 because the damage alleged was done to Source 1. Source 2's liability will not be solely to Prehn and Bandak.[6] The Defendants mischaracterize the nature of this lawsuit by suggesting that all of the derivative claims are direct or personal claims. That is simply not true and an examination of the derivative claims, and the facts pleaded in the case, reflects as much.

4. Defendants are estopped from challenging the adequacy of the Plaintiffs to represent Source 1.

As addressed in Section I, *supra*, in the event Source 1 intended to object to the Plaintiffs' representation of Source 1 related to the derivative claims in this case, it should have done so more than a month before the trial date and in accordance with the Scheduling Order. In light of Source 1's position of neutrality on the derivative claims throughout the prosecution of this case, the Plaintiffs pursued such claims, incurring the substantial expenses of written discovery and depositions. If Source 1 intended to question the adequacy of the Plaintiffs to enforce certain rights of Source 1, it should have utilized the process set forth in clear terms at Idaho Code Section 30-6-905. Source 1 may not now, after discovery and at the eleventh hour, haphazardly invoke the protections of its business judgment as set forth in Section 30-6-905. Source 1 held the statutory power to present these issues to the Court prior to discovery. It had a recognized duty to either take an active role in relation to the derivative claims and pursue or dismiss them, or to do nothing and remain neutral on such claims. *See* IDAHO CODE § 30-6-905;

[6] Obviously, looking beyond the facts of this case, to the extent a judgment against Source 2 may impact or offset the distributions Source 2 might otherwise make to Hodge, Brown and Claiborne, the practical impact is that Prehn and Bandak may be the only parties that truly realize any value but, ultimately, Source 1 will hold the benefit of a judgment against Source 2 for all of Source 1's members.

Kaplan v. Peat, Marwich, Mitchell & Co., supra. Source 1 elected to pursue the latter approach and remain neutral. Accordingly, Source 1 is now estopped by silence or acquiescence from objecting to the Plaintiffs' prosecution of derivative claims. *See KTVB, Inc. v. Boise City*, 94 Idaho 279, 281-82 (1971), citing 31 C.J.S. *Estoppel* § 114, pp. 593-94 ("Where nonaction or passivity is relied on to create an estoppel, it must appear that the party to be estopped was under a duty to act under the circumstances, or, as is sometimes declared, was bound in equity and good conscience actively to evidence his intention not to be bound by the transaction.").

D. The Plaintiffs Are Not Required to Hire Separate Counsel for Source 1.

The Defendants, including Source 1, contend that, after the expensive and tedious conduct of discovery in this case, the Plaintiffs must pay for yet another attorney to try the derivative claims. Not unlike the obstructive discovery tactics employed by them throughout this litigation, the Defendants' position is clearly intended to bludgeon the Plaintiffs with the threat of more unnecessary fees and costs in a fairly straight-forward case. As set forth *supra*, the alleged conflicts asserted by the Defendants are theoretical and appear to be an effort to harass the Plaintiffs and counsel immediately before trial.

A conflict of interest exists if "the representation of one client will be directly adverse to another client" or if there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client. IDAHO R. PROF COND. 1.7(a). Whether clients are aligned directly against each other requires examination of the ***context*** of the proceeding. *Id.* at cmt. 17. In this case, an examination of the context of this proceeding demonstrates that Moffatt Thomas may proceed as counsel for the Plaintiffs, both with respect to the single remaining personal claim against Source 1 and with respect to the Plaintiffs' derivative claims against Hodge and Source 2.

Moffatt Thomas does not have an attorney-client relationship with Source 1. Moffatt Thomas represents the aggrieved minority membership of Source 1, as explained *supra*, and its representation of this aggrieved membership of Source 1 is not directly adverse to a member's personal claims against Source 1.

Moreover, Judy Geier has been retained to represent Source 1 and the interests that it elected to defend and pursue in this case. At no point have the Plaintiffs objected to Source 1's retention of such independent counsel, and they do not do so now. At no point has Source 1, except through retained counsel, communicated with Moffatt Thomas. At no point has Source 1 or retained counsel provided any input or objection related to the derivative claims at issue, or the Plaintiffs' pursuit thereof. Further, as addressed *supra*, Source 1 never stayed discovery and investigated the derivative claims in the exercise of its business judgment or otherwise attempted to comply with Section 30-6-905.

To the contrary, the Defendants rely exclusively upon Judge Elgee's Order on Defendants' Motion to Dismiss in Blaine County Case No. CV-2010-763 for the proposition that the Plaintiffs must retain new "truly independent counsel" to pursue the derivative claims. Although there exist many distinctions between the *Hourglass* case and the instant case, the ***absolutely critical distinction*** is that the LLC in question, Hourglass Development, LLC, took an active role related to the derivative claims, timely objected to such claims, and timely filed a motion to dismiss, challenging the adequacy of the plaintiff to prosecute the derivative claims. In other words, Hourglass determined that the claims should be dismissed, based on its business judgment, or pursued independently on its own account and in its own name. No such determination was ever made by Source 1.

In *Hourglass*, the derivative complaint was filed October 10, 2010, amended November 15, 2010, and Hourglass, named as a defendant in the derivative litigation, brought the issue before the Court such that the Court heard oral argument, after complete briefing, on January 31, 2011. In other words, unlike Source 1, Hourglass did not take a position of neutrality with respect to the derivative claims for the duration of the case, only to become actively involved and attempt to exercise its business judgment by seeking dismissal after the derivative plaintiff had diligently pursued such claims through discovery and trial preparation. Hourglass bore the burden of challenging the inadequacy of the class representative before the litigation commenced in earnest by seeking dismissal. Upon denial of the timely motion to dismiss, and as a result of Hourglass's active role in relation to the derivative lawsuit, the derivative plaintiff ***offered*** to retain truly independent counsel.

In this case, Source 1 did not take an active role related to the derivative claims. It is undisputed that Source 1, who was at all pertinent times represented by counsel, Ms. Geier, abandoned its right to exercise any level of business judgment or control related to the derivative claims asserted by the Plaintiffs. Accordingly, it is appropriate for Moffatt Thomas, representing the aggrieved minority interests of Source 1, to prosecute such claims. The Defendants may not now claim conflict, particularly in light of the fact that they have failed to articulate any real conflict of interest. Therefore, it remains appropriate, in light of the absence of anything more than a theoretical conflict, to allow Moffatt Thomas to proceed as counsel on the derivative claims.

E. The Plaintiffs Are Entitled to Attorney Fees.

Under Idaho Code Section 12-123, the Plaintiffs are entitled to their reasonable fees for responding to the untimely and frivolous motion before the Court. Upon examination of

the timing of the Joint Motion, a challenge asserting unsupported and wholly new defenses based on demand futility and adequate representation, after discovery has closed, in violation of the Scheduling Order, and a month before trial, is clearly nothing more than an effort to "harass or maliciously injure another party to the civil litigation." IDAHO CODE § 12-123. Critical time that was to be spent preparing a trial memorandum, exhibits and testimony has been expended responding to a motion that has no merit at this stage of the case.

The Defendants had months to investigate the merits of their motion and did not have to rely upon facts provided by the client or prior counsel because the pertinent facts, *i.e.*, the claims pleaded by the Plaintiffs, are wholly contained within the Complaint. The merits of the Defendants' challenge of futility are not well-grounded in facts or existing law. Likewise, the Defendants' challenge to the Plaintiffs' adequacy as representatives of similarly situated members is completely unsupported. Consistent with their conduct of discovery in this case, the Joint Motion represents a last-ditch effort by the Defendants to harass and annoy the Plaintiffs prior to trial. For those reasons, the Plaintiffs are entitled to an award of reasonable fees and costs associated with responding to the frivolous Joint Motion.

IV. CONDITIONAL MOTION TO AMEND

The Defendants' assertions that the Plaintiffs do not have standing to pursue the derivative claims are entirely without merit. Hodge's conduct, as alleged under the derivative claims, damaged Source 1 and impacted all Source 1 members. The Plaintiffs have standing as members, demand upon Hodge was clearly futile, and the Plaintiffs adequately represent, and indeed comprise, the aggrieved membership interests. Further, there is no question that the Plaintiffs have diligently pursued the derivative claims in this case. To the extent the Court finds

the attorney conflict issue a compelling one, the Plaintiffs offer an alternative that may cure any theoretical or actual conflict without prejudice.

Upon the parties' completion of the narrowing of claims, there will exist only one cause of action nominally against Source 1. That claim is for breach of the loan agreement and back salary agreement between Prehn and Source 1, which agreements were consummated between Prehn and Source 1's manager, Hodge. In the context of this case and the timing of the Defendants' Joint Motion, to the extent the Defendants insist that a true conflict exists as a result of a direct action brought by Moffatt Thomas on behalf of Prehn against Source 1, and if the Court agrees, the Plaintiffs respectfully request leave of the Court to amend the Complaint to replace such claim against Source 1 with a claim for injunctive and declaratory relief against Hodge individually, requiring his compliance or the compliance of a Court-appointed liquidator, and enforcement of the Operating Agreement, the Prehn Loan Agreement and the Prehn Back Salary Agreement in finalizing the liquidation of Source 1. Such amendment would alleviate any alleged theoretical or actual conflict issues, as the only parties adverse to the Plaintiffs that would remain in this case will be Hodge and Source 2. While the Plaintiffs and Moffatt Thomas maintain that no conflict exists in this case as it is presently before the Court, for the reasons articulated *supra*, the foregoing amendment, which will not prejudice any of the Defendants because the facts and issues will not change, would allow the trial to go forward as planned and be an appropriate alternative to the prejudicial treatment of the Plaintiffs suggested by the Defendants.

V. CONCLUSION

For the foregoing reasons, the Defendants' Joint Motion should be stricken from the record or denied, and the Plaintiffs should be awarded their fees for having to respond to the

Joint Motion. In the event the Court finds an actual conflict related to Moffatt Thomas's representation of the Plaintiffs in this case, which it should not, the Plaintiffs respectfully request an amendment in order to address the appropriate alignment of the parties.

DATED this 13 day of March, 2013.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of March, 2013, I caused a true and correct copy of the foregoing **OBJECTION AND RESPONSE TO JOINT MOTION TO DISMISS DERIVATIVE CLAIMS** to be served by the method indicated below, and addressed to the following:

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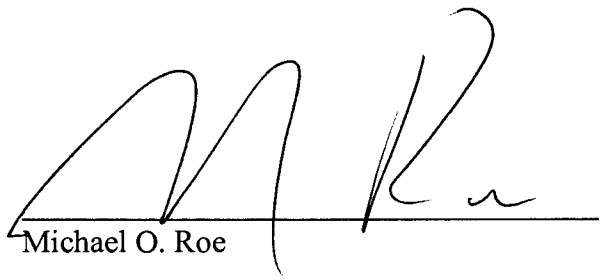

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MAR 28 2013

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

ORIGINAL

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

COME NOW Plaintiffs/Counterdefendants Donnelly Prehn and Dwight Bandak (the "Plaintiffs"), and Defendant/Counterclaimant, Christopher Claiborne ("Claiborne"), by and through their undersigned counsel, and jointly stipulate and agree pursuant to Idaho Rule of Civil Procedure 41(a)(1)(ii) that all claims by the Plaintiffs against Claiborne as set forth in Plaintiffs' Second Amended Complaint and all counterclaims by Claiborne against Plaintiffs as set forth in his Answer To Second Amended Complaint, Counterclaim and Crossclaim may be dismissed with prejudice. Further, each party shall bear its attorney fees and costs associated with this matter.

DATED this 28th day of March, 2013.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____

Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs/Counterdefendants
Donnelly Prehn and Dwight Bandak

DATED this 5th day of March, 2013.

BRIAN L. BOYLE ATTORNEY AT LAW

By_____
Brian L. Boyle – Of the Firm
Attorney for Defendant/Counterclaimant/
Crossclaimant Christopher Claiborne

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2013, I caused a true and correct copy of the foregoing **STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE** to be served by the method indicated below, and addressed to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHISTOPHER CLAIBORNE,

Counterclaimant,

vs.

DONNELLY PREHN AND DWIGHT BANKAK

Counterdefendants.

Case No. CV OC 1207728

MICHAEL L. HODGE, II AND THE SOURCE, LLC'S TRIAL BRIEF

CHRISTOPHER CLAIBORNE,

Crossclaimant,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; AND MICHAEL L. HODGE II,

Cross-defendants.

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge") and The Source, LLC (hereinafter "Source 2"), and hereby submit their Trial Brief of the legal issues:

I. INTRODUCTION

The purpose of this Trial Brief is to set forth for the convenience of the Court the applicable law regarding the legal issues which Defendants anticipate may arise during the trial of this matter.

This case concerns the dissolution of The Source Store, LLC ("Source I"). It is undisputed that on April 4, 2012 ALL the members of Source I voted unanimously to dissolve the company effective April 1, 2012. Michael Hodge ("Hodge") was voted to act as the liquidator of the company for the dissolution. To wind up the affairs of Source I, Hodge was to liquidate the assets of Source I and process the existing Purchase Orders generated in the first quarter of 2012.

On April 4, 2012, the members approved the distribution of the 2010 profit generated by Source I. On April 5, 2012, Source I issued the 2010 distributions to the members. The following is a breakdown of the amount received by each member and when it cleared Source I's account:

Total 2010 Capital Distribution

Don Prehn:	$94,632.56 -- 4/10/2012
Michael Hodge:	$80,695.00 -- 4/5/2012
Dwight Bandak:	$22,690.06 – 4/11/2012
Chris Claiborne:	$16,636.80 – 4/13/2012
Mike Brown:	$ 8,395.00 – 4/10/2012

On April 17, 2012, the members approved the calculations for the 2011 distributions. On April 17, 2012, Source I issued the first half of each member's total distribution. The following is a breakdown of the amount received by each member and when it cleared Source I's account:

First Capital Distribution for 2011

Don Prehn:	$52,288.50 – 4/24/2012
Michael Hodge:	$ 7,033.00 – 4/18/2012
Dwight Bandak:	$11,722.50 – 4/25/2012
Chris Claiborne:	$ 7,711.50 – 4/27/2012
Mike Brown:	$ 6,859.50 – 4/19/2012

On May 1, 2012, Source I issued one-half of the remaining half of the 2011 profit earnings which are broken down as follows:

Second Capital Distribution for 2011

Don Prehn:	$26,144.25 – 5/7/2012
Michael Hodge:	$26,266.50 – 5/3/2012
Dwight Bandak:	$ 7,401.25 – 5/7/2012
Chris Claiborne:	$ 4,714.25 – 5/10/2012
Mike Brown:	$ 3,429.75 – 5/4/2012

The remaining portion of the 2011 profit earnings of approximately $65,000 were held by Source I and contemplated and reflected in the stipulated Order dated May 17, 2012.

Plaintiffs' filed their First Amended Complaint on April 27, 2012. In the First Amended Complaint, Plaintiffs asserted thirteen (13) causes of action against the Defendants. On May 3, 2012, Plaintiffs filed their Application for Temporary Restraining Order and Motion for Preliminary Injunction and scheduled for hearing on May 8, 2012.

On May 8, 2012, the parties appeared with counsel and agreed to a number of issues, including defining the scope and understanding of how the dissolution and wind up would take place. The parties' agreement was presented on the record and memorialized by the Court on May 17, 2012.

Per the parties' agreement, the auction to sell all of Source I's assets was held on May 18, 2012. All the parties in the lawsuit through their respective counsel participated, negotiated and approved the instructions' designation of the Source I's assets and how the process would be conducted. All parties, including counsel, were copied on the bidding submitted by each participant. Source I's assets were sold and awarded to Don Prehn and Michael Hodge. By voluntary choice, Don Prehn elected not to tender his award amounts to Source I. Hodge tendered his money for the assets he was initially awarded and as the second highest bidder on the assets originally awarded to Don Prehn.

On June 29, 2012, Plaintiffs' filed their Second Amended Complaint which asserted six (6) new claims all arising from the auction for a total of nineteen (19) causes of action. In early part of March, 2013, Plaintiffs and Defendants stipulated to the voluntarily dismissal with prejudice of nine (9) of the causes of actions, including all of the six new claims arising from the auction. Now remaining are the following causes of action asserted by Plaintiffs and to whom the claims are asserted:

1) Don Prehn's Breach of Agreements against Source I;
2) Breach of Operating Agreement against Michael Hodge;
3) Breach of Non-Compete against Michael Hodge;
4) Breach of Fiduciary Duty against Michael Hodge;
5) Breach of Covenant of Good Faith & Fair Dealing against Michael Hodge;

6) Breach of loan agreement between Source I and Michael Hodge;

7) Unjust enrichment against Source 2;

8) Tortious interference with Contract against Michael Hodge and Source 2;

9) Constructive Trust against Michael Hodge; and

10) Injunctive Relief against Michael Hodge and Source 2.

Source 2 and Hodge have asserted a number of defenses which are outlined below:

Ratification

In *Twin Falls Livestock Commission Co. v. Mid-Century Insurance Co.,* 117 Idaho 176, 786 P.2d 567 (App.1990), the Idaho Court of Appeals explained the issue of ratification as follows:

> It is beyond cavil in the law of agency that a principal may be deemed to have ratified the unauthorized act of his agent if, at the time of such ratification, he has knowledge of all the material facts connected with the transaction; that such ratification may be either by words or conduct indicating an intention on the part of the principal to adopt the act as his own; and that such intention may be implied from an acceptance of the benefits of the unauthorized act. (Citation omitted).

Id., 177 Idaho at 182-83.

In *Manning v. Twin Falls Clinic & Hospital Inc.,* 122 Idaho 47, 830 P.2d 1185 (1992), the Idaho Supreme Court explained the issue as follows:

> As we have previously noted, "ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act as to some or all persons, is given effect as if originally authorized by him." (Citation omitted). The "essence of ratification by principal of act of agent is manifestation of mental determination by the principal to affirm the act, and this may be manifested by written word or by spoken word or by conduct, or may be inferred from known circumstances and principal's acts in relation thereto." (Citation omitted).
>
> The essence of ratification is a manifestation of intent to approve or sanction an act of an agent by a principal operating with knowledge of all material facts. Id. Although the effect of a ratified act is essentially the same as an act that was

> authorized, the distinguishing element is that ratification takes place after the act has occurred while authorization must occur before conduct arises. (Citations omitted).

Id., 122 Idaho at 54.

Idaho Code § 30-6-409 recognizes ratification under the Idaho Uniform Limited Liability Company Act. Specifically, I.C. § 30-6-409(6) states:

> All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

Non-Compete Claim

It is anticipated that Plaintiffs will argue that Hodge violated his non-competition agreement with Source I after all the members unanimously voted to dissolve the company on April 4, 2012. Pursuant to the stipulated Order entered on May 17, 2012, both Don Prehn and Hodge were to be released from their non-competition agreements as of May 18, 2012. Thus, it appears that Plaintiffs claim is associated with alleged acts done between April 4, 2012 through May 18, 2012.

In *Westco Autobody Supply, Inc. v. Ernest,* 149 Idaho 881, 243 P.3d 1069 (2010), the Idaho Supreme Court addressed the concept of competing within the confines of one's fiduciary duty to others. The Idaho Supreme Court cited and approvingly accepted the proposition stated in The Restatement (Third) of Agency § 8.04:

> Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors. During that time, **an agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship.** (Emphasis added).

Id., 149 Idaho at 892.

Idaho Code § 44-2701 entitled "Agreements and Covenants Protecting Legitimate Business Interests" allows employers to have key employees enter into agreements that protects the employer's legitimate business interest.

In *Trilogy Networks Systems, Inc. v. Johnson,* 144 Idaho 844, 172 P.3d 1119 (2007), the Idaho Supreme Court articulated the following:

> The measure of damages for the breach of an anti-competition clause is the amount that the plaintiff lost by reason of the breach, not the amount of profits made by defendant. (Citation omitted). . . Damages need be provide only with a "reasonable certainity[,]" and this means "that [the] existence of damages must be taken out of the real of speculation." (Citation omitted).

Id., 144 Idaho at 846.

At issue for the Court to decide is what damages, if any, has Source I and/or Don Prehn and Dwight Bandak suffered when all the members unanimously voted to dissolve Source I effective April 1, 2012 and no longer going to do business?

Waiver

A waiver is a voluntary, intentional relinquishment of a known right and "the party asserting the waiver 'must show that he acted in reasonable reliance upon it and that he thereby has altered his position to his detriment.'" *Ada County Highway District v. TSI,* 145 Idaho 360, 370 (2008).

Unclean Hands

The clean hands doctrine "stands for the proposition that 'a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue." *Ada County Highway District v. TSI,* 145 Idaho 360, 370 (2008). The application of this doctrine should be applied in the court's

discretion, so as to accomplish its purpose of promoting public policy and the integrity of the courts. *See id.*

Constructive Trust

In *Mikesell v. NewWorld Development Corp.,* 122 Idaho 868 (App.1992), the Idaho Court of Appeal cited the following about the constructive trust theory:

> Constructive trusts are raised buy equity for the purpose of working out right and justice, where there was no intention of the party to create such a relation, and often directly contrary to the intention of the one holding the legal title. . . If one party obtains the legal title to property, not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner. (Citation omitted).

Id., 122 Idaho at 875.

"Constructive trusts are created by courts of equity whenever title to property is found in one who in fairness ought not to be allowed to retain it." *Klein v. Shaw,* 109 Idaho 237, 706 P.2d 1348 (App. 1985).

Unjust Enrichment Doctrine

In *Gillette v. Storm Circle Ranch,* 101 Idaho 663, 666, 619 P.2d 1116 (1980), the Idaho Supreme Court expressed the following:

> The essence of an action based upon unjust enrichment is the claim that the defendant has been enriched by the plaintiff and that it would be inequitable for the defendant to retain that benefit without compensating the plaintiff for the value of the benefit. (Citation omitted). The measure of damages in a claim of unjust enrichment is the value of the benefit bestowed upon the defendant which, in equity, would be unjust to retain without recompense to the plaintiff. The emasure of damages is not necessarily the value of the money, labor and materials provided by the plaintiff to the defendant, but the amount of benefit the defendant received which would be unjust for the defendant to retain. (Citation omitted).

Tortious Interference with Contract

In *Beco Construction v. JUB Engineers,* 145 Idaho 719, 723 (2008), the Idaho Supreme Court outlined the elements of a prima facie case of tortious interference with contract are:

1) The existence of a contract;

2) Knowledge of the contract on the part of the defendant;

3) Intentional interference causing breach of the contract; and

4) Injury to the plaintiff resulting from the breach.

Consideration

Idaho Code § 29-103 entitled Presumption of consideration states a written instrument is presumptive evidence of a consideration.

Idaho Code § 29-104 entitled "Want of consideration" states the burden of showing want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

In *World Wide Lease, Inc. v. Woodworth,* 111 Idaho 880, 728 P.2d 769 (1987), the Idaho Supreme Court expressed the following:

> The term "failure of consideration" includes instances where a proper contract was entered into when the agreement was made, but because of supervening events, the promised performance fails, rending the contract unenforceable. (Citations omitted). Failure of consideration generally refers to failure of performance of a contract. (Citations omitted). "Failure" of consideration is to be distinguished from "want" or "lack" of consideration, which refers to instances where no consideration ever existed to support the contract, rendering the contract invalid from the beginning. (Citation omitted).

Summaries

Idaho Rule of Evidence 1006 states: "The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for

examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court."

The party offering a summary must lay a foundation showing that the underlying documents would be admissible. *State v. Barlow,* 113 Idaho 573, 746 P.2d 1032 (App.1987). To facilitate meaningful cross-examination, the party planning to offer a summary should notify the opposing party and should make the underlying documents available to him or her. *See id.*

Mitigation

In *Davis v. First Interstate Bank of Idaho,* 115 Idaho 169, 765 P.2d 680 (1988), the Idaho Supreme Court explained:

> The duty to mitigate, also known as the doctrine of avoidable consequences, provides that a plaintiff who is injured by actionable conduct of the defendant, is ordinarily denied recovery for damages which could have been avoided by reasonable acts, including reasonable expenditures, after the actionable conduct has taken place. (Citation omitted). The burden of proof is on the party causing the alleged damage, (citation omitted), the bank in this instance. The reasonableness of the method selected to minimize damages is an issue to be resolved by the jury. (Citation omitted).

Id., 115 Idaho at 170.

Debts & Obligations of Limited Liability Company

Idaho Code § 30-6-304 entitled "Liability of members and managers" states in relevant part:

> (1) The debts, obligations or other liabilities of a limited liability company, whether arising in contract, tort or otherwise:
> (a) Are **solely** the debts, obligations or other liabilities of the company; and
> (b) Do not become the debts, obligations or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager. (Emphasis added).

DATED this 28th day of March, 2013.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for Michael L. Hodge II and The Source, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of March, 2013, a true and correct copy of the foregoing was served upon the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

COME NOW Defendant/Crossdefendants The Source Store, LLC; The Source, LLC and Michael L. Hodge II (the "Crossdefendants"), and Defendant/Crossclaimant, Christopher Claiborne ("Claiborne"), by and through their undersigned counsel, and jointly stipulate and agree pursuant to Idaho Rule of Civil Procedure 41(a)(1)(ii) that all claims by Claiborne against Crossdefendants by Claiborne against Crossdefendants as set forth in his Answer To Second Amended Complaint, Counterclaim and Crossclaim may be dismissed with prejudice.

DATED this 27th day of March, 2013.

DAVISON COPPLE COPPLE & COPPLE, LLP

By _____
Edward J. Guerricabeitia – Of the Firm
Attorneys for Counterdefendants
The Source, LLC and Michael L. Hodge II

DATED this 27th day of March, 2013.

LAW OFFICE OF BRIAN L. BOYLE

By_____
Brian L. Boyle – Of the Firm
Attorney for Defendant/Counterclaimant/
Crossclaimant Christopher Claiborne

DATED this 27th day of March, 2013.

EVANS KEANE, LLP

By_____
Judy L. Geier – Of the Firm
Attorney for Defendant/Crossdefendant
The Source Store, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of March, 2013, I caused a true and correct copy of the foregoing **STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE** to be served by the method indicated below, and addressed to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

PLAINTIFFS' TRIAL MEMORANDUM

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CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

Plaintiffs Donnelly Prehn ("Prehn") and Dwight Bandak ("Bandak"), by and through their counsel of record, submit the following Trial Memorandum.

I. BACKGROUND

The Plaintiffs have sued The Source Store, LLC ("Source 1"), Michael L. Hodge, II ("Hodge"), and The Source, LLC ("Source 2"), for breach of contract, breach of fiduciary duty, and several other causes of action. Source 1 is a promotional products company founded in 2002 and located in Boise, Idaho. Prehn and Hodge were members of Source 1, a manager-managed limited liability company, since 2003.[1] As the business developed, Prehn and Hodge both executed non-compete agreements. At all times relevant to the litigation, Hodge was the sole manager of Source 1.

Source 1 grew to be a very successful small business. It had sales of $3,231,613 and net profits of nearly $300,000 in 2011. However, Prehn and Hodge were no longer getting along, and had frequent disagreements, including related to Hodge's demands to dramatically increase his annual salary from $60,000 to $155,000, plus boneses. In November 2011, Hodge hired Bristol Group to provide a valuation of Source 1. Bristol Group arrived at a figure of

[1] Bandak and Claiborne became members of Source 1 in 2004, and Brown became a member in 2006.

between $1,367,000 and $1,447,020. In early 2012, Prehn and Hodge discussed a potential buyout of Prehn's membership interest.

Utilizing a very discounted valuation figure, and ignoring certain creditor claims Prehn had against Source 1, Hodge offered the following terms to purchase Prehn's 37.975% interest[2] in Source 1 during the negotiation, for a total buyout of $416,582, which figure included pay-off of the loan. Expecting a good faith negotiation of buyout terms, Prehn countered with a higher buyout figure for his interest in Source 1, but also demanded payment of existing debt obligations Source 1 owed to Prehn.

In response, on April 2, 2012, Hodge refused the counteroffer and stated that he preferred to dissolve Source 1 immediately. Thereafter, on April 4, 2012, the members of Source 1 voted to dissolve the company. At such time, both Hodge and Prehn were bound by their respective non-compete agreements.

After the vote to dissolve, Hodge continued to serve as the sole manager of Source 1, with all of the fiduciary duties associated with that role, and Hodge, Claiborne, and Brown (who together represented the 51% controlling interest in Source 1) also eventually voted to appoint Hodge the "liquidator" of the Source 1 business. In other words, in addition to the fiduciary duties Hodge owed to Source 1 and Prehn and Bandak, as the manager of a manager-managed LLC, he was also imbued with the duty and authority to efficiently wind up Source 1's business in the manner prescribed by the company's Operating Agreement and Idaho law by, among other duties, ensuring that all creditors were paid and thereafter maximizing the return to ***all*** Source 1 members.

---

[2] Bandak owned 10.659% of Source 1.

Instead, while Hodge was supposed to be ensuring that the liquidation and wind-up was conducted for the benefit of all members and maximizing the return on the sale of any and all Source 1 assets, on April 16, 2012, Hodge, along with Claiborne and Brown, formed a new entity, The Source, LLC ("Source 2"). The purpose of Source 2 was to essentially carry on the business of Source 1, taking advantage of the existing market and goodwill that belonged to Source 1, thereby completely devaluing critical assets to the detriment of Prehn and Bandak. In essence, instead of negotiating a buyout in good faith or proceeding under the Operating Agreement, Hodge effectively stole the company without compensation.

In the wholly inappropriate dual role as manager and liquidator of Source 1 and manager of Source 2, Hodge repurposed Source 1 and its valuable assets as Source 2, even utilizing the same employees, trade dress, marks, website and marketing materials. Such efforts did not benefit Source 1 or its members (Hodge, Brown, Claiborne, Prehn, and Bandak), and were for the sole and exclusive benefit of Source 2 and its members (Hodge, Brown, and Claiborne). Ultimately, Prehn and Bandak were forced to involve the Court to avoid further devaluation of Source 1's assets, and to require a fair auction in accordance with the Operating Agreement and applicable law.[3]

Thereafter, Hodge conducted a questionable auction, and in his capacity as liquidator responsible for winding up Source 1's existing business, proceeded for approximately nine months to utilize Source 1 resources for the benefit of his new enterprise, Source 2, and for his own personal gain.

[3] *See* Operating Agreement, § 14.2(i)-(j).

II. ISSUES FOR TRIAL

A. Hodge's Breach of Fiduciary Duty

To establish a claim for breach of fiduciary duty, the plaintiff must establish that the defendant owed the plaintiff a fiduciary duty, and that the fiduciary duty was breached. *Mitchell v. Barendregt*, 120 Idaho 837 (1991). Under Idaho law, the manager of a manager-managed limited liability such as Source 1 owes the following fiduciary duties of loyalty[4]:

> (a) ***To account to the company and to hold as trustee for it any property, profit or benefit derived by the [manager]***;
>
> (i) In the conduct of winding up the company's activities;
>
> (ii) From a use by the [manager] of the company's property; or
>
> (iii) ***From the appropriation of a limited liability company opportunity***;
>
> (b) ***To refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company***; and
>
> (c) To refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

I.C. § 30-6-409(2) (emphasis added).

> The manager also owes the following duty of care:
>
> Subject to the business judgment rule, the duty of care of a [manager] in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member ***reasonably believes to be in the best interest of the company***.

[4] The duties listed in I.C. § 30-6-409 are first listed as the duties of members in a member-managed LLC, then subsection (7) clarifies how the rules change for manager-managed LLCs. "A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member." I.C. § 30-6-409(7)(e).

I.C. § 30-6-409(3) (emphasis added); *see also* Operating Agreement, § 6.6 ("In carrying out his duties and exercising his powers hereunder, the Manager shall exercise reasonable skill, care and business judgment.").

There is no question that Hodge, as the sole manager and liquidator of Source 1, owed the foregoing fiduciary duties to Source 1 and its members as a matter of law. The evidence will show continuous violations of the foregoing duties, beginning before dissolution and continuing throughout the winding up period.

First, and most generally, the evidence is expected to show that, despite the fact Source 1 was no longer incurring marketing and other selling expenses, and its labor and operational expenses should have been dramatically reduced, during the wind-up, Source 1's expenses, as reported by Hodge, dramatically increased over the expenses Source 1 incurred prior to dissolution. As a result, Source 1's profit margin on the nearly $1 million in booked orders, that were to be processed during the wind-up pursuant to the Court's order, fell precipitously to zero, and actually resulted in a loss. The evidence will show that, based on historical performance and the open orders at the time of dissolution, Source 1 should have expected a net profit exceeding $100,000. Instead, Source 1's had a loss of nearly $100,000 on the open orders, due to inflated overhead, gross mismanagement of the company, including continued selling expenses after the vote to dissolve, and diversion of assets, management efforts and orders. Source 1 was damaged by Hodge's breach of fiduciary duty in the amount of $212,616, the difference between the profits actually accrued (in this case a loss) and the profits that should have accrued in accordance with recent historical performance.

Second, the evidence is expected to show that despite the fact that Hodge's efforts during the Source 1 wind-up were largely devoted to the growth of Source 2 as a business

venture, as opposed to the continued management and liquidation of Source 1 (as evidenced by the more than $200,000 in missing money referenced above), which was no longer a going concern, he paid himself an inflated salary of $10,000.00 per month, while collecting little or no salary from Source 2. Furthermore, the evidence will show that the members did not vote on any liquidator salary, and a salary of $103,000 paid to Hodge for the nine months following the vote to dissolve was not reasonable, especially since he was not acting in the interests of Source 1. Hodge's conduct clearly violated both Hodge's duty of care to Source 1 and his duty of loyalty to Source 1, and illustrates his conflict of interest in acting as liquidator of Source 1 while conducting the business of Source 2.

Third, without disclosure to all of the members, Hodge, by and through a separate company, Hodge, LLC, purchased the commercial property where Source 1 was located. Thereafter, despite negotiating a monthly rent with the prior owner of $2,900 per month a mere six month prior to purchasing the property, Hodge, LLC proceeded to charge Source 1 monthly rent of at least $6,000 per month. Adding to such clear evidence of self-dealing, without acknowledging to the membership that he was both the landlord and the tenant in Source 1's lease transaction, Hodge asserted after dissolution that he was "working on getting Source 1 out of its lease." Moreover, Source 2 operated in the same space during the same period of time essentially rent-free. Hodge breached his fiduciary duty of loyalty to Source 1 in two separate ways related to the commercial offices of Source 1; he grossly inflated rent well above market for his own personal benefit (Hodge, LLC), and to the detriment of Source 1; and he also created a windfall for Source 2 by allowing it to inhabit and use the same space for its continuing sales and operational activities without paying rent.

Fourth, the evidence will show that Source 1 made a payment of $36,120.00 in prepayments for plastic, used to make shaker cups, to Technology Plastics, the company responsible for manufacturing such cups sold by Source 1, prior to dissolution. The pre-paid plastic was to result in a future discount or reduction in price on such products, as invoiced by Technology Plastics. Hodge neither disclosed this asset to members at auction, nor did he require Source 2 to compensate Source 1 for Source 2's subsequent use of the prepaid plastic discounts. Hodge, acting on behalf of Source 2, instead of Source 1 (to whom he owed a fiduciary duty), retained and used the benefit of the balance on the $36,120.00 in prepaid plastic, without compensation paid to Source 1 for the same. Such conduct was a clear violation of I.C. § 30-6-409(2)(b), resulting in damages to Source 1 in an amount exceeding $18,000.00.

Fifth, the evidence will show that Hodge, acting as manager of Source 1, paid a deposit of $12,400.00 to build a second mold for the domestic manufacture of shaker cups. The mold was to cost approximately $31,000.00. After dissolution, Hodge stated that Source 1 simply forfeited the deposit, but the evidence will show that Hodge, acting as manager of Source 2, paid only the balance owing on the mold, not the full price. In other words, Source 2 retained the benefit of the $12,400.00 deposit made by Source 1 without compensating Source 1 for the same, resulting in another violation of Hodge's duties of loyalty and care to Source 1.

Sixth, the evidence will show that Hodge, acting as the manager and liquidator of Source 1, as well as the manager of Source 2, held an unconscionable auction of Source 1 assets. He prepared a list of four action lots. Auction Lot 1 consisted of certain molds for making plastic cups, which cups were Source 1's most important product. Auction Lot 4 consisted of Source 1 intellectual property, which consisted of good will, names, logos, concepts, artwork, product names and website. Prehn successfully bid on the molds in the amount of $96,000 and

another auction lot related to office inventory. Hodge successfully bid on the embroidery machines and the intellectual property. In total, the successful bids on the auction would have resulted in $165,310 in proceeds to Source 1. However, immediately after the auction, Hodge advised Prehn that the molds could not be used by Prehn for their intended purpose—making plastic cups—because he asserted that production of such cups would infringe the intellectual property purchased by Hodge. Although Prehn planned to remove any "Source" marks or information from the molds and disputes that the "design" of the cups was part of the intellectual property auction lot, absent resolution of the viability of Hodge's position, Hodge's deceitful conduct placed the utility of the molds at risk, potentially rendering the molds almost entirely valueless. Prehn deposited the bid amount with counsel until the issue could be resolved, but Hodge treated the failure to pay over the amount as forfeiture of the bid, and ultimately, Hodge purchased all assets of Source 1 for $105,010. The actions of Hodge as auctioneer clearly violated his duty of loyalty and, at a minimum, resulted in lost auction proceeds to Source 1 in the amount of $60,300 (the difference between the total auction proceeds if one includes Prehn's bid and the total auction proceeds that only account for Hodge's bids).

Furthermore, Hodge's violation of the duty of loyalty at the auction damaged Prehn in the amount of profits associated with the sale of the shaker cups produced by the molds. Prehn successfully bid on the office inventory, which included the equipment necessary to run a business, and he successfully bid on the "shaker cup" molds, which shaker cups were the most important products in Source 1's business. The evidence is expected to show that the time-frame to produce a new mold for shaker cups would be nine months. Accordingly, Prehn would have had the ability to produce shaker cups exclusively in an established market for at least that period of time. In other words, as a result of Hodge's concealments and subsequent misconduct related

to the auction, Prehn was damaged in the amount of, at a minimum, the profit margin on Source 1's shaker cup business in an established market for a period of nine months. As noted *supra*, such damages equal approximately $236,376.

Seventh, the evidence is expected to show that Source 1 received and accepted a purchase order from BodyBuilding.com in the amount of $223,081.84. Thereafter, Hodge, acting in the interest of Source 2, and against the interests of Source 1, diverted such very large order from Source 1 to Source 2, depriving Source 1 of the profits associated with filling the order.

Ordinarily, the measure of damages in an action for breach of fiduciary duty is the profit that would have accrued if the fiduciary had not breached his duty. *See Steelman v. Mallory*, 110 Idaho 510, 514 (1986); *Pickering v. El Jay Equipment Co., Inc.*, 108 Idaho 512, 517 (Ct. App. 1985). A company may also avoid or recover compensation paid to the agent by the principal. *See* RESTATEMENT (2D) OF AGENCY § 469. Following a deliberate and willful breach by an agent, he forfeits all compensation. *See id.* at Comment (b). In this case, both remedies are appropriate. Hodge is liable for the lost profits and assets of Source 1, as well as the lost profits of Prehn associated with Hodge's conduct as auctioneer. Furthermore, his conduct necessitates repayment of the salary he collected during the wind-up period, in light of the fact he did not act for the benefit of Source 1, and willfully breached his duties of loyalty and care.

B. Hodge's Breach of Various Agreements and Contracts

The elements for a claim for breach of contract are (a) the existence of a valid contract, (b) the breach of the contract, (c) damages due to such breach, and (d) the amount of those damages. *Mosell Equities, LLC v. Berryhill & Company, Inc.*, Appeal No. 38338, Slip Op. at 11 (Idaho Feb. 22, 2013). The requisites of a valid contract are competent parties, a lawful

purpose, consideration, and mutual agreement to all essential terms. IDJI 6.01.1; *Haener v. Ada County Highway Dist.*, 108 Idaho 170, 173 (1985). "There must be a meeting of the minds of the parties for the contract to be formed." *Pierson v. Sewell*, 97 Idaho 38 (1975).

In this case, the evidence will show the existence of the following valid and enforceable contracts: (1) the Prehn Loan Agreement; (2) the Prehn Back Salary Agreement; (3) the Source 1 Operating Agreement; (4) Hodge's non-compete agreement; and (5) the loan agreement between Hodge and Source 1. The evidence will also show the breach of those contracts by Hodge, and monetary damages accruing to Source 1 and the Plaintiffs.

1. The Prehn Contracts

The evidence will show that Prehn entered into a valid agreement with Hodge and Source 1 regarding back salary, the terms of which are clear. In consideration for his efforts to keep the company afloat in its early stages and to make the company profitable, Prehn agreed to forego collection of a salary from July 2002 through December 2005. Prehn and Hodge agreed that Prehn would accrue 75% of the salary actually paid to Hodge through 2004, interest free, and 100% of the salary actually paid to Hodge through 2005, also interest free. The balance of the back salary owed to Prehn is, as of today, $68,750.00.

The evidence will also show that Prehn entered into a valid agreement with Hodge and Source 1 regarding a loan to Source 1 and advanced funds to Source 1 pursuant to clear terms, that Source 1 made repayments consistent with such terms, and that a balance on the loan of approximately $89,137, as of today, remains unpaid.

2. The Operating Agreement

The evidence is expected to show that, after a vote of dissolution, Hodge, as sole manager and liquidator of Source 1, was obligated by Source 1's Operating Agreement and

Idaho law to pay creditors of Source 1, including member creditors, before making any distributions. *See* I.C. § 30-6-405; Operating Agreement, § 14.2(i). Hodge violated the Operating Agreement and Idaho law by paying distributions to members instead of first paying creditors, and is personally liable for such distributions. *See id.*; *see also* I.C. § 30-6-406(1).

The evidence will also show that, pursuant to the Operating Agreement, Hodge had a duty of care and duty of loyalty to Source 1 and its members, and was obligated not to engage in "disabling conduct,"[5] or manage Source 1 in bad faith. He breached such duties in the manner more specifically set forth *supra*.

3. The Hodge Loan and Nissan Truck

The evidence is expected to show that Source 1 provided a loan to Hodge for him to defend felony charges, of which Hodge has repaid a small portion (the "Hodge Loan"). The balance of the unpaid loan is $20,084. Prior to its dissolution, Source 1 purchased a Nissan truck for Hodge for company use, taking out a loan against the truck in the name of Source 1. After Source 1 voted to dissolve, Hodge, as liquidator of Source 1, transferred the truck (then valued around $22,000) and the related truck loan (balance of $19,761) into the name of Hodge, individually. Hodge declared that his assumption of the loan effectively satisfied his obligation to pay back the Hodge Loan, completely failing to account for the truck as a Source 1 asset. In other words, Hodge assumed a Source 1 obligation with a value of $19,761 in exchange for two Source 1 assets—the Nissan truck ***and*** the Hodge Loan—with a combined value of $42,084. It

[5] "Disabling Conduct" shall mean any act or failure to act which (a) constitutes gross negligence, willful conduct or fraud, (b) is taken in bad faith, (c) involves a knowing violation of law, or (d) is done in reckless disregard of the duties involved in the conduct of one's position." Operating Agreement, § 18.

appears that Hodge has now abandoned such position. The Hodge loan balance of $20,084 remains unpaid. The damages to Source 1 for this misconduct are in the amount of $20,084.

4. The Hodge Non-Compete

Hodge was subject to a non-compete agreement with Source 1. The evidence is expected to show that Hodge, in violation of the express terms of his non-compete, diverted Source 1 business to Source 2, and in particular a large ($223,000) order booked with Source 1 by BodyBuilding.com, resulting in lost profits to Source 1.

Hodge also breached his non-compete when he arranged the auction. The evidence is expected to show that Hodge prepared a list of four auction lots. Auction Lot 1 consisted of certain molds for making plastic cups, which cups were Source 1's most important product. Auction Lot 4 consisted of Source 1 intellectual property, which consisted of good will, names, logos, concepts, artwork, product names and website. Prehn successfully bid on the molds in the amount of $96,000 and another auction lot related to office inventory. Hodge successfully bid on the embroidery machines and the intellectual property.

Immediately after the auction, Hodge advised Prehn that the molds could not be used by Prehn for their intended purpose—making plastic cups—because Hodge asserted that production of such cups would infringe upon the intellectual property purchased by Hodge. Although Prehn planned to remove any "Source" marks or information from the molds and disputes whether the "design" was Source 1 intellectual property, the anti-competitive means by which Hodge arranged the auction placed the utility of the molds at risk, potentially rendering the molds almost entirely valueless. Prehn deposited the bid amount with counsel until the issue could be resolved, but Hodge treated the failure to release the amount as forfeiture of the bid, and ultimately, Hodge took all assets of Source 1 for $105,010.

Hodge's breach of his non-compete agreement in this regard damaged Prehn in the amount of lost profits associated with the sale of the shaker cups produced by the molds. Prehn successfully bid on the office inventory, which included the equipment necessary to run a business, and he successfully bid on the "shaker cup" molds, which shaker cups were among the most important and lucrative, if not the most lucrative, products in Source 1's business. The evidence is expected to show that the time-frame to produce a new mold for shaker cups would be approximately nine months. Accordingly, Prehn would have had the ability to produce shaker cups domestically in an established market for at least that period of time. In other words, as a result of Hodge's anti-competitive conduct as auctioneer prior to expiration of the non-compete agreement, Prehn was damaged in the amount of, at a minimum, the profit margin on shaker cups in an established market for a period of nine months. Such damages equal approximately $236,376.

C. Source 2 Was Unjustly Enriched

A claim for unjust enrichment requires proof of three elements: (1) the plaintiff confers a benefit upon the defendant; (2) the defendant appreciates the benefit; and (3) the defendant accepts the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof. *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 558 (2007). "The essence of the quasi-contractual theory of unjust enrichment is that the defendant has received a benefit which would be inequitable to retain at least without compensating the plaintiff to the extent that retention is unjust." *Beco Const. v. Bannock Paving*, 118 Idaho 463, 466 (1990)

In this case, Source 2 was unjustly enriched by Source 1 in several ways. First, as discussed *supra*, the evidence is expected to show that Source 1 (under Hodge's management)

conferred a booked purchase order from BodyBuilding.com in the amount of $223,081.84 upon Source 2 (also managed by Hodge). Source 2, under Hodge's management, appreciated and accepted the benefit of that booked purchase order, retaining any profits thereon, without payment to Source 1. Based on historical net profits, the net profit on such order would be approximately $20,000.00.

Second, the evidence is expected to show that Source 1 paid Hodge a significant monthly salary of $10,000 during the more than nine months of its liquidation, that Source 2 did not pay Hodge a monthly salary during such time, and that Hodge collected the salary from Source 1 while working largely on behalf of Source 2. Source 2 appreciated and accepted the benefit of Hodge receiving a salary in the amount of $103,000.00 from Source 1 to manage Source 2, without payment to Source 1.

Third, the evidence is expected to show that Source 1 made a payment of $36,120.00 in prepaid plastic to Technology Plastics, the company responsible for manufacturing certain plastic products sold by Source 1, prior to dissolution. The pre-paid plastic was to result in a discount or reduction in price on such products, as invoiced by Technology Plastics. Source 2 thereafter retained the benefit of the balance on the $36,120.00 in prepaid plastic, more than $18,000.00, without compensation paid to Source 1 for the same.

Fourth, the evidence is expected to show that Source 1 paid a deposit of $12,400.00 to build a mold for the manufacture of certain Source 1 products. The mold was to cost approximately $31,000.00. After dissolution, Hodge stated that Source 1 simply forfeited the deposit, but the evidence is expected to show that Source 2 paid only the balance owing on the mold, not the full price. In other words, Source 2 retained the benefit of the $12,400.00 deposit made by Source 1 without compensating Source 1 for the same.

Accordingly, Source 1 has been unjustly enriched in the amount of not less than $150,000.00.

D. Hodge and Source 2 Tortiously Interfered with Source 1's Contractual Relations with Customers.

"Tortious interference with contract has four elements: (1) the existence of a contract; (2) knowledge of the contract on the part of the defendant; (3) intentional interference causing a breach of the contract; and (4) injury to the plaintiff resulting from the breach." *Wesco Autobody Supply v. Ernest*, 243 P.3d 1069 (2010).

In this case, the evidence is expected to show the existence of at least one contract (*see* discussion of booked purchase order for BodyBuilding.com), with material and definite terms, between Source 1 and a customer to provide goods to such customer. Hodge and Source 2 had knowledge of the contract, and intentionally interfered with the contract by coordinating the reissuance of the purchase orders in the name of Source 2, resulting in lost profits to Source 1 in the amount of approximately $20,000.00.

E. Hodge Has Demonstratedd Willful Contempt for the Court's Order Regarding Dissolution.

The foregoing conduct by Hodge was willful, and clearly in contempt of the Court's Order Re: Dissolution of The Source Store, LLC and Related Matters, entered, May 17, 2012 (the "Order"). In pertinent part, the Order provides as follows:

> 1. The dissolution and winding up of Source 1 (the "Dissolution") shall be completed as soon as is reasonably practicable, with the participation and cooperation of all parties, in a manner which is fully transparent, accountable, fair and equitable to all members of Source 1 and with a view to discharging all legitimate debts and other obligations of Source 1 and maximizing the return and final distribution of all remaining funds to all Source 1 members.
>
> 2. The parties stipulate and agree that there are approximately $900,000.00 in open purchase orders from Source 1 customers in

various stages of processing, which are assets of Source 1 (the "Existing Purchase Orders"). As part of the Dissolution, the Existing Purchase Orders shall be processed by Source 1, using Source 1 offices, equipment and personnel, in a manner consistent with the parameters set forth in paragraph 1 above.

. . .

4. The parties further stipulate and agree that it is in the best interests of Source 1 and its members that, during and pursuant to the Dissolution, the overhead and other expenses of Source 1 be reduced to the absolute minimum necessary to complete the Dissolution, including without limitation the processing of the Existing Purchase Orders and the sale of the Assets, in order to maximize the return and final distribution of funds to all Source 1 members. Defendant Hodge will generate a proposed budget for the completion of the Dissolution and circulate it to all the parties as soon as possible. Defendant Hodge will identify those persons necessary to complete the processing of the Existing Purchase Orders with the understanding and purpose of reducing the overhead and expense to the absolute minimum necessary to complete the Dissolution.

5. All funds, amounts, credits, offsets and other monies properly paid to, payable or accrued to or actually received by Source 1, including without limitation in connection with the Dissolution, processing of the Existing Purchase Orders, the sale of the Assets or otherwise, shall be deposited in the Source 1 operating account no. 0102010790 at Syringa Bank in Boise, Idaho (the "Dissolution Account"). Once the Dissolution is complete with the receipt and collection of the funds for the open auction of the Assets and processing of the Existing Purchase Orders, Defendant Hodge will provide to all parties a full and complete accounting reflecting the monies received and the expenses paid during the Dissolution process. The parties acknowledge and agree that Defendant Hodge has already provided to all parties a number of business records for the first quarter of 2012, including but not limited to Customer Lists, Existing Purchase Orders for domestic and international projects, Inventory List of Company Assets, and other business records No checks shall be written on and no funds shall be withdrawn from the Dissolution Account; provided, however, that bona fide and legitimate costs and expenses of Source 1 arising from the Dissolution and consistent with the parameters set forth in paragraphs 1 and 4 may be paid from the Dissolution Account. In addition, 2011 profits in the amount of $65,000.00 may be distributed to all Members of Source 1, but no other distributions,

> including profits from processing of the Open Purchase Orders, shall be made until this litigation is complete, the parties all agree or as otherwise ordered by the Court.
>
> . . .
>
> 8. No party shall divert, employ or otherwise use any Source 1 asset, including without limitation the Assets or Source 1 employees, to or for the benefit of Source 2 or any other person or entity.

Order at 2-5.

The evidence is expected to show conduct and transactions by Hodge related to the Dissolution Account that willfully violate the Court's Order, and specific violations of the foregoing provisions. Idaho Rule of Civil Procedure Rule 75 governs contempt proceedings. A judge may order civil or criminal sanctions regardless of the nature of the underlying case. *See Chavez v. Canyon County*, 152 Idaho 297 (2012) (citing *Camp v. East Fork Ditch Co.*, 137 Idaho 850, 862 (2002)). Civil sanctions are penalties that are conditional; they are designed to compel a party to do some act and are not punitive in nature, like sanctions for criminal contempt. *See id.* (citing *Hicks v. Feiock*, 485 U.S. 624, 633 (1988)). "In order to impose a civil sanction, the court must find, by a preponderance of the evidence, that all of the elements of contempt have been proven and that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction." I.R.C.P. 75(j)(1). The failure to comply with a court order need not be intentional or willful to impose a civil contempt sanction. *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). The trial court has discretion to determine what sanctions to impose for contempt. *State v. Stradley*, 127 Idaho 203, 208 (1995).

Accordingly, because except by virtue of the remedy of constructive trust *infra*, Hodge does not have the present ability to remedy his non-compliance, and in light of Hodge's

willful contempt of the Order entered, the Court should impose civil sanctions in an amount to be determined by the Court.

F. Hodge and Source 2 Hold Source 1's Property in a Constructive Trust and Request Injunctive Relief in the Form of a New Wind-up of Source 1.

A constructive trust arises when "legal title to property has been obtained through actual fraud, misrepresentations, concealments, taking advantage of one's necessities, or under circumstances otherwise rendering it unconscionable for the holder of legal title to retain beneficial interest in property." *Witt v. Jones*, 111 Idaho 165, 168 (1986). Imposition of a constructive trust is an equitable remedy and does not require that the holder of legal title intend to create a trust interest in another. *Davenport v. Burke*, 30 Idaho 599, 608 (1917). A constructive trust arises from the legal title holder's wrongful actions and not from any intent to create a trust. *Id.* A party seeking to impose a constructive trust must prove the facts alleged to give rise to a construct trust by clear and convincing evidence. *Hettinga v. Sybrandy*, 126 Idaho 467, 469 (1994).

In light of the above-described egregious and intentional misconduct by Hodge during the liquidation of Source 1, the Plaintiffs seek imposition of a constructive trust on Source 2. Not only did Hodge engage in repeated self-dealing, concealment and unconscionable conduct during the liquidation of Source 1, but the bulk of such misconduct occurred ***after*** the Plaintiffs sought and obtained a Court Order regarding dissolution of Source 1, which was intended to force Hodge to act equitably. Even the threat of contempt, however, did not prevent Hodge from taking every opportunity to ensure that the assets of Source 1 were completely exhausted once wind-up was complete, having provided benefits only to himself personally and his new company, Source 2. In essence, Source 2 is Source 1, without the Plaintiffs as voting members. Accordingly, the Court should order that Source 2 constructively holds the business of

"The Source" in trust for Source 1, and consistent with the Plaintiffs' request for injunctive relief, dissolution of Source 1 should begin anew, under the supervision of the Court and in the hands of an appointed independent liquidator, consistent with Idaho Code Section 30-6-702(5).

DATED this 31 day of March, 2013.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs/Counterdefendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of March, 2013, I caused a true and correct copy of the foregoing **PLAINTIFFS' TRIAL MEMORANDUM** to be served by the method indicated below, and addressed to the following:

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Michael O. Roe

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK, **Plaintiffs,** **vs.** **THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,** **Defendants.**	**Case No. CV OC 1207728** **ORDER TO SEAL EXHIBIT G ATTACHED TO AFFIDAVIT OF ED GUERRICABEITIA AND REPLACE WITH AMENDED AFFIDAVIT OF ED GUERRICABEITIA**
Cross claims and counterclaims.	

This Matter is before the Court on parties Stipulation to Seal Exhibit G Attached to Affidavit of Ed Guerricabeitia and Replace with Amended Affidavit of Ed Guerrricabeitia and good cause appearing therefore,

IT IS HEREBY ORDERED AND THIS DOES ORDER that the Stipulation to Seal Exhibit G Attached to Affidavit of Ed Guerricabeitia and Replace with Amended Affidavit of Ed Guerrricabeitia is GRANTED.

DATED this 5 day of ~~March~~ June, 2013.

The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of ~~March~~ June, 2013, a true and correct copy of the foregoing document was served by the method indicated below, and addressed to the following:

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CHRISTOPHER D. RICH
INGA JOHNSON
Clerk of the Court

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

This matter is before the Court on parties' Stipulation for Voluntary Dismissal with Prejudice pursuant to Idaho Rule of Civil Procedure 41(a)(1)(ii) . The Court being fully advised in the premises,

IT IS HEREBY ORDERED AND THIS DOES ORDER that the Stipulation for Voluntary Dismissal is GRANTED and the following claims are dismissed with prejudice:

- Violation of Idaho Trade Secrets Act (Count 7)
- Violation of the Lanham Act (Count 8)
- Common Law Trade Name and Trademark Infringement (Count 9)
- Breach of Warranties (Count 14)
- Unconscionable Auction Contract (Count 15)
- Fraud (Count 16)
- Promissory Estoppel (Count 17)
- Equitable Estoppel (Count 18)
- Declaratory Relief (Count 19).

DATED this 5 day of June, 2013.

The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of ~~March,~~ June 2013, I caused a true and correct copy of the foregoing **ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE** to be served by the method indicated below, and addressed to the following:

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NO. _____
A.M. _____ FILED P.M. 3:05

JUN 06 2013

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE OF GEORGE M. BROWN

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

This matter is before the Court on parties' Stipulation for Voluntary Dismissal with Prejudice of George M. Brown pursuant to Idaho Rule of Civil Procedure 41(a)(1)(ii) . The Court being fully advised in the premises,

IT IS HEREBY ORDERED AND THIS DOES ORDER that the Stipulation for Voluntary Dismissal of George M. Brown is GRANTED with prejudice, with the parties to bear their own costs and attorney fees.

DATED this 5 day of June, 2013.

The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of ~~March,~~ June 2013, I caused a true and correct copy of the foregoing **ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE OF GEORGE M. BROWN** to be served by the method indicated below, and addressed to the following:

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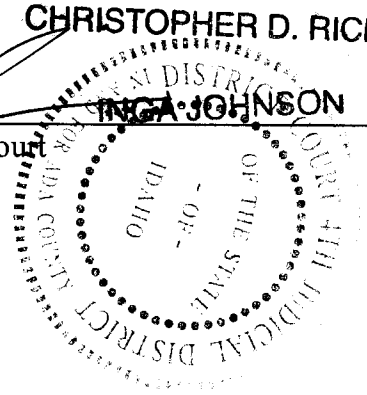

ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE - 5

NO. _____
A.M. _____ FILED P.M. 3:00

JUN 06 2013

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

CHRISTOPHER CLAIBORNE,

Counterclaimant,

v.

DONNELLY PREHN and DWIGHT BANDAK,

Counterdefendants.

Case No. CV OC 1207728

ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE

CHRISTOPHER CLAIBORNE,

Crossclaimant,

v.

THE SOURCE STORE, LLC; THE SOURCE, LLC; and MICHAEL L. HODGE II,

Crossdefendants.

This matter is before the Court on parties' Stipulation for Voluntary Dismissal with Prejudice pursuant to Idaho Rule of Civil Procedure 41(a)(1)(ii). The Court being fully advised in the premises,

IT IS HEREBY ORDERED AND THIS DOES ORDER that the Stipulation for Voluntary Dismissal is GRANTED and that all claims by the Plaintiffs against Claiborne as set forth in Plaintiffs' Second Amended Complaint and all counterclaims by Claiborne against Plaintiffs as set forth in his Answer To Second Amended Complaint, Counterclaim And Crossclaim are dismissed with prejudice. Further, each party shall bear its attorney fees and costs associated with this matter.

DATED this 5 day of June, 2013.

The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7 day of June, 2013, I caused a true and correct copy of the foregoing **ORDER GRANTING STIPULATION FOR VOLUNTARY DISMISSAL WITH PREJUDICE** to be served by the method indicated below, and addressed to the following:

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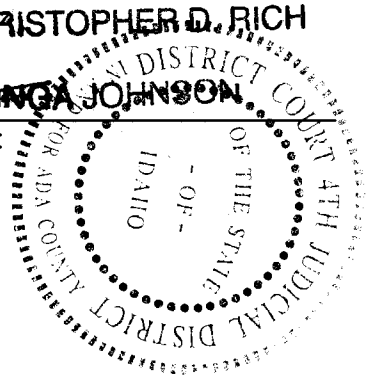
CHRISTOPHER D. RICH
INGA JOHNSON
Clerk of the Court



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A.M. _____ P.M. 2:27

NOV 27 2013

CHRISTOPHER D. RICH, Clerk
By JERI HEATON
DEPUTY

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Attorneys for Plaintiffs/Counterdefendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

STIPULATION TO THE PARTIES' TRIAL EXHIBITS

ORIGINAL

COME NOW Plaintiffs Donnelly Prehn and Dwight Bandak and Defendants The Source Store, LLC, The Source, LLC and Michael L. Hodge, by and through their undersigned counsel, and jointly stipulate and agree that the following trial exhibits are admitted into evidence at the trial of this matter:

Please see **Exhibit A** attached hereto

DATED this 27 day of November, 2013.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By_____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

DATED this _____ day of November, 2013.

DAVISON COPPLE COPPLE & COPPLE, LLP

By_____
Edward J. Guerricabeitia – Of the Firm
Attorneys for Defendants
The Source Store, LLC, The Source, LLC and Michael L. Hodge

COME NOW Plaintiffs Donnelly Prehn and Dwight Bandak and Defendants The Source Store, LLC, The Source, LLC and Michael L. Hodge, by and through their undersigned counsel, and jointly stipulate and agree that the following trial exhibits are admitted into evidence at the trial of this matter:

Please see **Exhibit A** attached hereto

DATED this _____ day of November, 2013.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By_____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

DATED this 27th day of November, 2013.

DAVISON COPPLE COPPLE & COPPLE, LLP

By_____
Edward J. Guerricabeitia – Of the Firm
Attorneys for Defendants
The Source Store, LLC, The Source, LLC and Michael L. Hodge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of November, 2013, I caused a true and correct copy of the foregoing **STIPULATION TO THE PARTIES' TRIAL EXHIBITS** to be served by the method indicated below, and addressed to the following:

E. Don Copple
Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendants
The Source Store, LLC, The Source, LLC and
Michael L. Hodge II

( ) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
(✓) Facsimile

Michael O. Roe

EXHIBIT A

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
Angela Hunt, Deputy Clerk
Kasey Redlich, Court Reporter

Case No. CV OC 1207728
Date: November 27, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
1	Operating Agreement of The Source Store, LLC	4/1/2003	SOURCE 1 762	x			✓	12-2
2	The Source Store, LLC Non-Compete Agreement for Michael L. Hodge II	5/12/2003	SOURCE 1 812	x			✓	12-3
3	First Amendment to the Operating Agreement of The Source Store, LLC	4/22/2004	SOURCE 1 828	x				
4	Second Amendment to the Operating Agreement of The Source Store, LLC	11/11/2004	SOURCE 1 820	x				
5	Third Amendment to the Operating Agreement of The Source Store, LLC	1/1/2009	SOURCE 1 816	x				
6	Audio Recording of Partner Call/Transcription of Call	11/20/2010	PLF00655	x				
7	Email from Don Prehn to Mike Hodge re Summary of Our Discussion	12/23/2010	PLF00664					
8	Email memo by Don Prehn	12/27/2010	PLF00666					
9	Email from Mike Hodge to Don Prehn re Stock Ownership and Option	2/9/2011	PLF00134					
10	Email from Mike Hodge to Mike Brown, Dwight Bandak, Chris Claiborne, and Don Prehn re Board Budget for 2011	2/15/2011	SOURCE 1 896	x			✓	12-2
11	Email from Don Prehn to Mike Hodge, Mike Brown, Dwight Bandak, and Chris Claiborne re Board Budget for 2011	2/20/2011	PLF00042	x			✓	12-2
12	Email from Mike Hodge to Mike Brown, Don Prehn, Chris Claiborne, and Dwight Bandak re Board Budget for 2011	2/22/2011	PLF00050	x			✓	12-2
13	Email from Jesse Arp to Don Prehn, Mike Brown, Dwight Bandak, Chris Claiborne, and Mike Hodge re Benefits & Perks	4/21/2011	PLF00208	x				
14	Email from Mike Hodge to Don Prehn, Dwight Bandak, Chris Claiborne, and Mike Brown re Request for Early Renewal of Source Credit Line	9/6/2011	PLF00279					
15	Office Lease Agreement between Nielhof LLC and The Source Store, LLC	11/1/2011	HODGE 415			✓	✓	12-3
16	Email from Jesse Arp to Mike Hodge and Darrell Gustaveson	11/30/2011						
17	Email from Jesse Arp to Don Prehn, Dwight Bandak, Chris Claiborne, Mike Brown, and Mike Hodge re FW: Valuation Request from The Source Store	12/16/2011					A	12-2
18	Email from Mike Hodge to Don Prehn, Mike Brown, and Jesse Arp re Board Meeting	12/28/2011	PLF00365					
19	The Source Store, LLC Balance Sheet and Profit & Loss Statement for December 2011	1/26/2012	SOURCE 1 1600	x				

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
Angela Hunt, Deputy Clerk
Kasey Redlich, Court Reporter

Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
20	Technology Plastics LLC Invoice No. 5029 to The Source Store, LLC	2/24/2012	SOURCE 1 2822				✓	12-6
21	Email from Jesse Arp to Mike Hodge re LOAN updates	3/7/2012	PLF00776					
22	Syringa Bank Receipt for Wire Transfer for $12,400 to Thrive Industrial by The Source Store, LLC	3/14/2012	SOURCE 1 4656	x				
23	Email from Mike Hodge to Don Prehn, Mike Brown, Dwight Bandak, Mike Hodge, Jesse Arp, and Chris Claiborne re Board Meeting Documents	3/15/2012	SOURCE 1 622	x			✓	12-2
24	Collection of Emails Between Board Members re Dissolution of The Source Store, LLC	4/4/2012	Various PLF Bates Nos.	x				
25	Email from Jesse Arp to Don Prehn, Dwight Bandak, Chris Claiborne, Mike Brown, and Mike Hodge re FW: 2010 CAPITAL DISTRIBUTIONS	4/4/2012	SOURCE 1 247					
26	Email from Mike Hodge to Dwight Bandak, Don Prehn, Chris Claiborne, and Mike Brown re 2010 Total Distribution	4/4/2012	SOURCE 1 253	x				
27	Office Lease Agreement between Hodge LLC and The Source Store, LLC (unsigned)	4/5/2012	SOURCE 1 177			✓	✓ - ~~sub~~ but not as ~~the~~ lease	
28	Email from Mike Hodge to Blake Carley, Leslie Shin and Blair Bews re Board Shorts	4/6/2012		x				
29	Email from Mike Hodge to Blake Carley, Leslie Shin and Blair Bews re Board Shorts	4/6/2012		x				
30	Email from Mike Hodge to Lauren Grogan re Follow up	4/6/2012		x				
31	Email from Mike Hodge to Don Prehn re 2010 Total Distribution	4/9/2012	PLF00493	x			✓	12-2
32	Email from Chris Halstead to Blair Bews and Mike Hodge re FL2400014.pdf	4/9/2012		x			✓	
33	Email from Mike Brown to Mike Hodge	4/10/2012		x				
34	Email from Mike Hodge to justin@mynutritiondepot.com re Follow up	4/11/2012		x				
35	The Source Store, LLC Balance Sheet and Profit & Loss Statement for January 2012	4/12/2012	SOURCE 1 1612	x			✓	12-3
36	Email from Mike Hodge to Traci.schwinnen@abbott.com and Brian.armstrong@abbott.com re Follow up	4/13/2012		x				
37	Email from Mike Hodge to Don Prehn, Dwight Bandak, Chris Claiborne, and Mike Brown re Dissolution	4/15/2012	PLF00546	x			✓	12-2

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
Angela Hunt, Deputy Clerk
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Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
38	Email from Mike Hodge to Don Prehn, Dwight Bandak, Chris Claiborne, and Mike Brown re Dissolution	4/15/2012	PLF00546	x			
39	The Source Store, LLC Invoice to Technology Plastics	4/15/2012	SOURCE 1 4653	x			✓ 12-2
40	Email from Mike Hodge to Don Prehn, Dwight Bandak, Chris Claiborne, and Mike Brown re Dissolution Update	4/16/2012	PLF00544	x			✓ 12-2
41	Certificate of Organization of Limited Liability Company for The Source, LLC	4/16/2012		x			✓ 12-2
42	The Source, LLC Open Orders Report - Regular and Fulfillment Orders	4/16/2012					A 12-2
43	Email from Mike Hodge to Don Prehn, Dwight Bandak, Chris Claiborne, and Mike Brown re Dissolution	4/17/2012	PLF00541	x			✓ 12-12
44	Email from Jesse Arp to Don Prehn, Dwight Bandak, Chris Claiborne, Mike Brown, and Mike Hodge re FW: Purposed 2011 CAPITAL DISTRIBUTIONS	4/17/2012	SOURCE 1 286	x			✓ 12-3
45	The Source, LLC Account Agreement with Syringa Bank Account No. 0402009823	4/17/2012	SOURCE 1 3131	x			
46	ASI Computer Systems Request for Transfer of ASICS License for Company Sold	4/17/2012	SOURCE 1 5114	x			✓ 12-3
47	ASI Computer Systems ProfitShield-Assurance Program Agreement to The Source, LLC	4/18/2012	SOURCE 1 5116	x			✓ 12-3
48	ASI Computer SystemsNetwork User License Agreement to The Source, LLC	4/18/2012	SOURCE 1 5117	x			✓ 12-3
49	Email from Chris Halstead to Mike Hodge and Lauren Paul re FW: The Source	4/19/2012		x			
50	ASI Computer Systems Investment Proposal to The Source, LLC	4/19/2012	SOURCE 1 5112	x			✓ 12-3
51	ASI Computer Systems New Company Information Completed by The Source, LLC	4/19/2012	SOURCE 1 5113	x			✓ 12-3
52	Correspondence from ASI Computer Systems to The Source, LLC	4/19/2012	SOURCE 1 5115	x			✓ 12-3
53	Email from Mike Hodge to Don Prehn, Dwight Bandak, Chris Claiborne, and Mike Brown re Assets	4/20/2012	PLF00504	x			
54	Email from Mike Hodge to Chris Halstead, Blair Bews and Jesse Arp re P.O.	4/23/2012		x			
55	Email from Chris Halstead to Mike Hodge, Leslie Shinn, Blair Bews, and Jesse Arp re P.O.	4/23/2012		x			

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
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Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
56	Email from Jesse Arp to Chris Halstead, Mike Hodge, and Leslie Shinn re P.O.	4/23/2012		x				
57	Statement of Dissolution Limited Liability Company of The Source Store, LLC	4/25/2012		x			✓	12-2
58	Email from Mike Hodge to Jesse Arp, Chris Halstead, and Leslie Shinn re P.O.	4/25/2012		x				
59	Email from Mike Hodge to Lauren Paul and Jesse Arp re P.O.	4/25/2012		x				
60	Email from Mike Hodge to Mike Brown and Cammas Freeman re Thesourcestore.com	4/25/2012		x				
61	Email from Mike Brown to Mike Hodge re LA Companies	4/25/2012		x				
62	Email from Mike Brown to Jen.McKeon re Skull Caps	4/27/2012		x				
63	Email from Mike Hodge to Mike Brown, Dwight Bandak, Don Prehn and Chris Claiborne re FW:Source Loan Vs. Truck Loan	4/28/2012	PLF00554	x			✓	12-2
64	The Source, LLC Monthly Booked Orders Report for April 2012	4/30/2012						
65	Technology Plastics LLC Credit Memo No. 5244 to The Source Store, LLC	4/30/2012	SOURCE 1 2801				A	12-2
66	Email from Mike Hodge to Mike Roe, Mike Baldner, Don Prehn, Dwight Bandak, Mike Brown, and Chris Claiborne re Molds for Shaker Cups	5/4/2012	PLF00603	x			✓	12-2
67	Email from Mike Hodge to Don Prehn, Mike Roe, Mike Baldner, Neal Stuart, Dwight Bandak, Mike Brown, and Chris Claiborne re Intellectual Property	5/5/2012	PLF00601	x			✓	12-6
68	Email from Chris Halstead to Mike Hodge re The Source	5/8/2012		x				
69	Email from Mike Brown to Jesse Arp re FW:Re:Credit for The Source	5/11/2012	SOURCE 1 2800				✓	12-6
70	Email from Jesse Arp to Mike Hodge and Mike Brown re FW:Past Due Invoices from THE SOURCE	5/21/2012						
71	Correspondence from Ed Guerricabeitia to Mike Roe re Prehn et al v. Hodge et al	5/21/2012				✓	A	12-2
72	Email from Mike Hodge to Don Prehn, Dwight Bandak, Tom Fernandes, Mike Brown, and Chris Claiborne re Final Bid Process & Instructions	5/22/2012	PLF00590	x			✓	12-2
73	Correspondence from Ed Guerricabeitia to Technology Plastics re Prehn et al v. Hodge et al	5/22/2012				✓	✓	12-2
74	The Source, LLC Monthly Booked Orders Report for May 2012	5/31/2012						

STIPULATED TRIAL EXHIBIT LIST

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Angela Hunt, Deputy Clerk
Kasey Redlich, Court Reporter

Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
75	The Source, LLC Monthly Booked Orders Report	5/31/2012				✓	✓	12-2
76	Email from Chris Halstead to Mike Hodge and Blair Bews re FL2400014.pdf	6/14/2012		x			✓	12-2
77	Technology Plastics LLC Credit Memo No. 5490 to The Source, LLC	7/6/2012	SOURCE 1 4746					
78	Technology Plastics LLC Invoice No. 5605 to The Source, LLC	8/8/2012	SOURCE 1 4629	x				
79	The Source Store, LLC Order History Report for November 28, 2011 to August 21, 2012	8/12/2012	SOURCE 1 968					
80	The Source Store, LLC Balance Sheet and Profit & Loss Statement for February 2012	8/24/2012	SOURCE 1 1622	x				
81	The Source Store, LLC Balance Sheet and Profit & Loss Statement for March 2012	8/24/2012	SOURCE 1 859	x				
82	The Source Store, LLC Balance Sheet and Profit & Loss Statement for April 2012	8/24/2012	SOURCE 1 864	x			✓	12-2
83	The Source Store, LLC Balance Sheet and Profit & Loss Statement for May 2012	8/24/2012	SOURCE 1 869	x				
84	The Source Store, LLC Balance Sheet and Profit & Loss Statement for June 2012	8/24/2012	SOURCE 1 874	x				
85	The Source Store, LLC Balance Sheet and Profit & Loss Statement for July 2012	8/24/2012	SOURCE 1 879	x				
86	Spreadsheet Entitled Summary Differential Analysis Equalizing Economic Benefit Between Mike Hodge and Don Prehn	8/24/2012	SOURCE 1 920				A	12-5
87	The Source, LLC Liquidity Report Package	9/4/2012	SOURCE 1 4552					
88	The Source Store, LLC Balance Sheet and Profit & Loss Statement for August 2012	9/12/2012	SOURCE 1 1364	x				
89	The Source - Import Orders Cash Flow Needs	9/26/2012	SOURCE 1 4531			✓	✓	12-2
90	Email from Jade Welch to Mike Hodge re Please Approve Loan Pay Off	10/5/2012					✓	12-5
91	Email from Mike Hodge to Jade Welch	10/5/2012					✓	12-5
92	Email from Jade Welch to Mike Hodge	10/8/2012					✓	12-5
93	Email from Jade Welch to Mike Hodge	10/8/2012					✓	12-5
94	The Source, LLC Open Orders Report - Regular and Fulfillment Orders	10/9/2012	SOURCE 1 4468			✓	✓	12-2
95	The Source, LLC Monthly Booked Orders Summary Report	10/16/2012	SOURCE 1 4517					
96	The Source, LLC Open Orders Report - Regular and Fulfillment Orders	10/16/2012	SOURCE 1 4518					
97	The Source, LLC Booked/Billed Orders Comparison Report	10/18/2012	SOURCE 1 4510					
98	The Source Store, LLC Cleared Checks Report for October 2012	10/24/2012	SOURCE 1 5301				✓	12-5

STIPULATED TRIAL EXHIBIT LIST

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Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
99	The Source Store, LLC Cleared Checks Report for October 2012	10/31/2012	SOURCE 1 5287				✓ 12-5
100	Syringa Bank Receipt for Wire Transfer for $18,600 to Thrive Industrial by The Source, LLC	11/13/2012	SOURCE 1 2490	x			✓
101	The Source, LLC Balance Sheet and Profit & Loss Statement for April 2012	12/4/2012	SOURCE 2-29	x			
102	The Source, LLC Balance Sheet and Profit & Loss Statement for May 2012	12/4/2012	SOURCE 2-30				
103	The Source, LLC Balance Sheet and Profit & Loss Statement for June 2012	12/4/2012	SOURCE 2-33				
104	The Source, LLC Balance Sheet and Profit & Loss Statement for July 2012	12/4/2012	SOURCE 2-35				
105	The Source, LLC Balance Sheet and Profit & Loss Statement for August 2012	12/4/2012	SOURCE 2-37				
106	The Source, LLC Balance Sheet and Profit & Loss Statement for September 2012	12/4/2012	SOURCE 2-39				
107	The Source, LLC Monthly G/L Detail by Account Report	12/7/2012	SOURCE 2-60				
108	The Source Store, LLC Balance Sheet and Profit & Loss Statement for September 2012	12/31/2012	SOURCE 1 5339	x			
109	The Source Store, LLC Balance Sheet and Profit & Loss Statement for October 2012	12/31/2012	SOURCE 1 5271	x			
110	The Source Store, LLC Balance Sheet and Profit & Loss Statement for November 2012	12/31/2012	SOURCE 1 5324	x			
111	The Source Store, LLC Cleared Checks Report for December 2012	12/31/2012	SOURCE 1 5205				
112	The Source Store, LLC Salesperson Checkwriting Vouching Final Journal	12/31/2012	SOURCE 1 5218				
113	The Source Store, LLC Salesperson Check Summary Final Journal	12/31/2012	SOURCE 1 5222				
114	The Source, LLC Balance Sheet and Profit & Loss Statement	12/31/2012					
115	The Source, LLC Balance Sheet and Profit & Loss Statement for September 2012	12/31/2012					
116	The Source, LLC Balance Sheet - Post Closing Journal Entries for September 2012	12/31/2012					
117	The Source, LLC Balance Sheet and Profit & Loss Statement for October 2012	12/31/2012					✓ 12-6
118	The Source, LLC Balance Sheet - Post Closing Journal Entries for October 2012	12/31/2012					
119	The Source, LLC Profit & Loss Statement - Post Closing Journal Entries for October 2012	12/31/2012					

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
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Kasey Redlich, Court Reporter

Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
120	The Source, LLC Balance Sheet and Profit & Loss Statement for November 2012	12/31/2012						
121	The Source, LLC Balance Sheet - Post Closing Journal Entries for November 2012	12/31/2012						
122	The Source, LLC Profit & Loss Statement - Post Closing Journal Entries for November 2012	12/31/2012						
123	The Source, LLC Balance Sheet and Profit & Loss Statement for December 2012	12/31/2012					✓	12-2
124	The Source, LLC Balance Sheet and Profit & Loss Statement	12/31/2012						
125	The Source, LLC Order History Report for September to December 2012	12/31/2012						
126	The Source Store, LLC Balance Sheet and Profit & Loss Statement for December 2012	1/15/2013	SOURCE 1 5172	x				
127	The Source Store, LLC Balance Sheet and Profit & Loss Statement for January 2013	1/15/2013	SOURCE 1 5188	x				
128	The Source Store, LLC Trial Balance - Balance Sheet for December 2012	1/17/2013	SOURCE 1 5179					
129	The Source Store, LLC Trial Balance - Profit & Loss Statement for December 2012	1/17/2013	SOURCE 1 5184					
130	The Source Store, LLC Trial Balance - Balance Sheet for January 2013	1/17/2013	SOURCE 1 5196					
131	The Source Store, LLC Trial Balance - Profit & Loss Statement for January 2013	1/17/2013	SOURCE 1 5200					
132	Audio Recording of Partner Call/Transcription of Call	4/00/2012	PLF00654	x			✓	12-2
133	The Source Store, LLC Bank Account Statements for Account No. 402009559	4/30/2012 - 11/30/2012	SOURCE 1 2074	x			✓	12-3
134	The Source Store, LLC Bank Account Statements for Account No. 102010790	4/30/2012 - 12/31/2012	SOURCE 1 2017	x			✓	12-3
135	The Source, LLC Bank Account Statements for Account No. 402009823	4/30/2012 - 12/31/2012	SOURCE 2-279	x			✓	12-2
136	The Source, LLC Bank Account Statements for Account No. 402009831	4/30/2012 - 12/31/2012					✓	12-5
137	Packet re Payment by The Source Store, LLC of May 2012 Credit Card Bill for Mike Brown	5/00/2012	Various SOURCE 1 Bates Nos.					
138	Packet re Payment by The Source Store, LLC of May 2012 Credit Card Bill for Mike Hodge	5/00/2012	Various SOURCE 1 Bates Nos.					
139	Packet re Payment by The Source Store, LLC of May 2012 Credit Card Bill for Blair Bews	5/00/2012	Various SOURCE 1 Bates Nos.					
140	Packet re Payment by The Source Store, LLC of June 2012 Verizon Wireless Invoice	6/00/2012	Various SOURCE 1 Bates Nos.					

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
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Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
141	Packet re Payment by The Source Store, LLC of June 2012 Regence Blueshield of Idaho Invoice	6/00/2012	Various SOURCE 1 Bates Nos.				
142	Packet re Payment by The Source Store, LLC of June 2012 Credit Card Bill for Mike Brown	6/00/2012	Various SOURCE 1 Bates Nos.				
143	Packet re Payment by The Source Store, LLC of June 2012 Credit Card Bill for Mike Hodge	6/00/2012	Various SOURCE 1 Bates Nos.				
144	Packet re Payment by The Source Store, LLC of June 2012 Credit Card Bill for Blair Bews	6/00/2012	Various SOURCE 1 Bates Nos.				
145	Packet re Payment by The Source Store, LLC of July 2012 Credit Card Bill for Blair Bews	7/00/2012	Various SOURCE 1 Bates Nos.				
146	The Source Store, LLC Monthly G/L Detail by Account Report	April - November 2012	SOURCE 1 1681			✓	No 12-3
147	The Source, LLC Monthly Booked Orders Summary Report	May - August 2012	SOURCE 2-302				
148	List of Employees of The Source, LLC	undated		x			
149	Spreadsheet Tracking Payments re Loan and Back Pay	undated	SOURCE 1 919				
150	The Source, LLC Facebook Page Reports	various					
151	Email from Mike Brown to Michelle re shaker cups	5/21/2012	SOURCE 1 2142	x			
152	Email from Mike Brown to Tom Fernandes, Marc Butkevich, and Ed Guerricabeitia re FW:Shaker cup issue	5/29/2012	SOURCE 1 2155	x			
153	Email from Mike Brown to Eric, Michelle, Jason, and Mike Hodge re Shaker cup issue	6/1/2012	SOURCE 1 2165	x			
154	Email from Mike Brown to Eric and Mike Hodge re Shaker Cup Issue	6/14/2012	SOURCE 1 2169	x			
155	Email from Mike Brown to Tom Fernandes, Barbara Day, Karann Schaller, and Toni DiLeone re Universal	8/10/2012	SOURCE 1 2387	x			
156	Email from Mike Brown to Tom Fernandes, Karann Schaller, and Jesse Arp re Universal	9/4/2012	SOURCE 1 2402	x			
157	Meuleman Mollerup LLP Statement No. 1 to The Source Store, LLC	8/31/2011	SOURCE 1 2772				
158	Meuleman Mollerup LLP Statement No. 2 to The Source Store, LLC	9/30/2011	SOURCE 1 2771				
159	Meuleman Mollerup LLP Statement No. 3 to The Source Store, LLC	10/31/2011	SOURCE 1 2770				
160	Email from Mike Brown to Michelle, Eric Schwartz, and Blair Bews re Shirt Samples	4/10/2012	SOURCE 1 2121				
161	The Source Store, LLC Cleared Checks Report for February 2012	3/16/2012	SOURCE 1 5154				

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
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Kasey Redlich, Court Reporter

Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
162	The Source Store, LLC Cleared Checks Report for May 2012	6/18/2012	SOURCE 1 5163					
163	Email from Mike Hodge to Mike Roe, Mike Baldner, Neal Stuart, Mike Brown, Chris Claiborne, Dwight Bandak, Don Copple, and Mike Hodge re Open Orders Report	5/1/2012		x			✓	12-3
164	Damages Summary			Subj to add'l trial testimony (if needed)		✓	✓	12-3
165	Source 1 Actual Performance					✓	✓	12-3
166	Diversion ofSource 1's Funds and Unjust Enrichment					✓	✓	12-3
167	Lost Profits on Shaker Cup Sales					✓	✓	12-3
168	Email from Jesse Arp to Don Prehn re Fw: Board Meeting	12/29/2011				✓	✓	12-3
169	Hodge Aff'd pmcd 1-17-13						✓	12-6
170	EMail Young → Ds						✓	12-6
1000	Audio Recording and Transcript of Board Meeting	11/20/2010		x			✓	12-3
1001	Audio Recording and Transcript of Board Meeting	3/22/2012		x				
1002	Audio Recording and Transcript of Board Meeting	4/13/2012		x			✓	12-3
1003	Source 1's Operating Agreement and			x			✓	12-3
1004	The Source Ownership Proposal			x			✓	12-3
1005	Source 1 Corporate Notes re Partner Profit Strategies for Don and Mike			x			✓	12-3
1006	Source 2's Bank Statements	April 2012 thru Dec 2012		x			✓	12-6
1007	Source 1's Bank Statements	Jan 2012 thru Dec 2012		x			✓	12-3
1008	Source 1's Money Market Account	April 2012 thru Nov 2012		x				
1009	Source 1's Balance Sheets and Profit & Loss Statements	Dec 2011 thru Jan 2013		x		✓	✓	12-2
1010	Janae Young's Work File Reconciling Source I's Account for Report of Wind Up						✓	12-5
1011	Donnelly Prehn's Non-Compete Agreement with Source 1			x			✓	12-5
1012	Summary of Payment Transfers Between Source I and Source 2						✓	12-5
1013	Summary of Credit/Offset Payments due to Source 2 from Source I						✓	12-5
171	Email Baldner → Hodge 4-11-12					✓	✓	12-6
172	Email Fernandez → Hodge 5-8-12							

STIPULATED TRIAL EXHIBIT LIST

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NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT	
1014	Summary of Hodge Vehicle Loan Repayment to Source I						✓	12-5
1015	Payments Made by Source 2 for Second Mold			x				
1016	Summary and Back-Up Documents with Regards to Source 1's Prepayment of Plastic Material to Technology Plastics			x			A	12-2
1017	Mike Hodge Email to all Source 1 Members with Proposed Budget and Salaries for 2011 with Attachments	2/15/2011		x			✓	12-3
1018	Mike Brown String Email to all Source 1 Members Concerning Proposed Budget and Salaries for 2011	2/20/2011		x			✓	12-6
1019	Don Prehn's Email to all Source 1 Members Agreeing to Proposed Budget and Salaries for 2011	2/20/2011		x			✓	12-3
1020	Mike Hodge Email to all Source I Members Confirming Majority Vote on the Proposed Budget and Salaries for 2011	2/22/2011		x				
1021	Don Prehn's Email to all Source I Members Responding to Request from Mike Hodge	4/1/2011		x				
1022	Mike Hodge Email to all Source I Members	4/4/2011		x				
1023	Don Prehn Email to Himself as a Note to Lawsuit File;	4/16/2011		x			✓	12-2
1024	Mike Hodge Email to Don Prehn in Response to Statements Made by Don Prehn in Relation to an Email on May 11, 2011	6/6/2011		x				
1025	Jeff Nielsen Email to Blair Bews and Mike Hodge Concerning the Building	9/14/2011		x			✓	12-6
1026	Jesse Arp Email to all Source I Members Attaching Copy of Bristol Group Valuation dated November 8, 2011	12/16/2011		x				
1027	Don Prehn Email to all Source I Members Including an Email dated December 28, 2011 Sent to Mike Hodge with Information Requested for the 2012 Annual Board Meeting and Mike Hodge's Responses	1/1/2012		x				
1028	Mike Hodge Email to all Source I Members in Response to Don Prehn's Email	1/16/2012		x				
1029	Don Prehn's Email to all Source I Members Requesting a Partner's Vote for on the Information He Requested	1/18/2012		x			✓	12-3

STIPULATED TRIAL EXHIBIT LIST

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Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
1030	Don Prehn's Email Proposing to Buyout his Shares or Mike's Shares in Source I with String Email for the Basis of his Proposal	1/18/2012		x			✓ 12-3
1031	Dwight Bandak Email to Mike Hodge	1/27/2012		x			✓ 12-5
1032	Mike Hodge's Email to all Source I Members, Mike Baldner, Lyle Cook and Neal Stuart Concerning Don Prehn's Buyout	2/3/2012		x			
1033	Bristol Group's Valuation of Source I	2/3/2012		x			
1034	Email Correspondence from Kelly Shaw of Bristol Group	2/8/2012		x			
1035	Mike Email to all Source I Members Regarding Annual Board Meeting	2/10/2012		x			
1036	Don Prehn's Email to all Source I Members Concerning the Evaluation by Bristol Group with Bristol Group's Response	2/15/2012		x			
1037	Don Prehn's Email to all Source I Members Concerning the Evaluation by Bristol Group	2/21/2012		x			
1038	Kelly Shaw's of Bristol Group Email to all Source I Members in Response to Don Prehn's Questions on the Valuation of Source I	3/9/2012		x			
1039	Don Prehn's Email to all Source I Members Regarding his Buyout	3/12/2012		x			
1040	Mike Hodge's Email to all Source I Members Concerning Don Prehn's Buyout with	3/15/2012		x			
1041	Mike Hodge's Proposed Offer to Buyout Don Prehn's Shares with Source I			x			
1042	Don Prehn's Email to all Source I Members in Response to Mike Hodge's Offer and his Proposal with Attachments	3/22/2012		x			
1043	Jesse Arp's Email to all Source I Members Attaching a Final Breakdown of Each Member's Share of Distribution for 2010 Earnings	4/4/2012		x			✓ 12-3
1044	All Source I Members' Emails for Their Unanimous Vote on April 4, 2012 to Dissolve Source I Effective April 1, 2012	4/4/2012		x			✓ 12-3
1045	Email Correspondence Confirming Closing of the Building	4/5/2012		x			✓ 12-3
1046	Mike Hodge Email to all Source I Members in Response to Don Prehn's Email dated April 6, 2012	4/9/2012		x			✓ 12-3
1047	Don Prehn's Email to all Source I Members in Response to Mike Hodge's Email dated April 9, 2012	4/9/2012		x			

STIPULATED TRIAL EXHIBIT LIST

Patrick Owen, District Judge
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Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
1048	Mike Hodge's Email to all Source I Members in Response to Dwight Bandak Email dated April 11, 2012	4/11/2012		x			
1049	Mike Hodge Email to all Source I Members Concerning the Dissolution of Source I	4/15/2012		x			✓ 12 3
1050	Don Prehn's Email to all Source I Members in Response to Mike Hodge's Email dated April 15, 2012	4/17/2012		x			
1051	Certificate of Organization for Source 2			x			
1052	Mike Hodge Email to all Source I Members Updating Dissolution	4/16/2012		x			
1053	Jesse Arp Email to all Source I Members Attaching Breakdown of Each Members' Respective Distribution of 2011 Earnings	4/17/2012		x			✓ 12 3
1054	Mike Hodge's Email to all Source I Members Regarding Assets and Status of Dissolution	4/20/2012		x			
1055	Mike Hodge Email to all Source I Members Including an Email from Blair Bews Concerning his Research of the Value of the Truck	4/20/2102		x			
1056	Mike Hodge Email to all Source I Members Concerning Truck and Loan	4/28/2012		x			✓ 12-3
1057	Mike Hodge Email to all Source I Members Concerning Bodybuilding.com's Rebate Account on 2011 Sales	4/28/2012		x			
1058	Mike Hodge Email to all Source I Members, Mike Baldner, Mike Roe and Don Copple regarding April Booked and Billed Sales	5/4/2012		x			✓ 12-3
1059	Email Correspondence Between Don Prehn and Edward Butkevich	5/16/2012		x			✓ 12-2
1060	Mike Hodge Email to all Source I Members, Tom Fernandes, Jesse Arp, Ed Guerricabeitia, Mike Roe and Mike Baldner Awarding the Assets of Source I after Conclusion of the Auction	5/18/2012		x			✓ 12-3
1061	Don Prehn's Email to Mike Hodge, Ed Guerricabeitia, Mike Roe and Mike Baldner Presenting his Final Bids on the Assets of Source I at the Auction	5/18/2012		x			✓ 12-3
1062	Mike Hodge's Email to Mike Baldner and Ed Guerricabeitia Presenting his Final Bids on the Assets of Source I at the Auction	5/18/2012		x			✓ 12-3

STIPULATED TRIAL EXHIBIT LIST

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Case No. CV OC 1207728
Date: November ___, 2013

Donnelly Prehn and Dwight Bandak
vs.
The Source Store, LLC, et al.

NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
1063	Mike Hodge's Email to all Source I Members, Tom Fernandes, Jesse Arp, Ed Guerricabeitia, Mike Roe and Mike Baldner advising Don Prehn's Forfeiture of his Bids on the Shaker Cup Molds and Inventory	5/22/2012		x			
1064	Bills of Sale (2) from Source I to Source 2 of all the Assets of Source I			x			✓ 12-6
1065	Email Correspondence and Attachments Between Don Prehn and Representatives of Bodybuilding.com	6/1/2012 to 6/13/2012		x			✓ 12-3
1066	Discount and Rebate Program Between Bodybuilding.com and Source I			x			✓ 12-3
1067	Payment Agreement Prepared by Don Prehn			x			
1068	Summary of Bodybuilding.com's percentage of Total Orders and Profits between Source I and Source 2			x			✓ 12-5
1069	Statement of Dissolution for Source I			x			
1070	Source I's Business Plan for 2004			x			✓ 12-5
1071	Source I's Profit & Loss Statements from January'10 through November' 11			x			
1072	Summary of Source I's Net Profits from January'10 through September' 12						✓ 12-5
1073	Summary of Source I's General Expenses with and without Legal or Extraordinary Expenses from January' 11 through December' 12						✓ 12-5
1074	Summary of Source I's General Expenses with and without Legal or Extraordinary Expenses from January' 12 through December' 12, along with dissolution expenses of Source I paid by Source 2						✓ 12-5
2000	The Source: Ownership Proposal	2001		x			
2001	The Source: Partner Profit Strategies For Don and Mike			x			
2002	Secretary of State Filings for The Source Store, LLC	6/21/2002		x			
2003	Operating Agreement of the Source Store LLC	4/1/2003		x			
2004	Contribution Agreement	4/1/2003		x			
2005	First Amendment to the Operating Agreement of The Source Store, LLC ---Claiborne & Bandak	4/22/2004		x			

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NO.	DESCRIPTION	DATE	BATES NO/ID	STIP	OFFD	OBJ	ADMIT
2006	Second Amendment to the Operating Agreement of The Source Store, LLC --- Claiborne substitute	10/15/2004		x			
2007	Third Amendment to the Operating Agreement of the Source Store LLC---Prehn & Hodge ratios	1/1/2009		x			
2008	Hodge and Prehn Member Share Interest/Sale Agreement	1/1/2009		x			
2009	Email between Hodge and Prehn Re: Loan Analysis Revised Completion Date	5/16/2007		x			
2010	Email between Hodge & Prehn Re: Side Deal	3/10/2008		x			
2011	Order Re: Dissolution of the Source Store,LLC and Related Matters	5/17/2012		x			✓ 12-6
2012	Plfs' Verified Responses to Hodge's Discovery; Plfs' Verified First & Second Supplement: Rogs 4, 5 & 7; RFAs 1 & 4; RFPs 1, 2, 6 & 7	11/12/12; 3/19/13; 3/25/13		x			
2013	Plfs' Verified Responses to Source 2's Discovery; Plfs' Verified First & Second Supplement: Rogs 4, 5, & 7; RFP 1, 2, 6 & 7	11/1/12; 3/19/13; 3/25/13		x			
2014	Master Summary of Payments to Prehn between 12/31/03 thru 5/01/12 Bates Nos. Source I 5497-Source I 5503			x			
2015	2004 Payments to Prehn Bates Nos. Source I 5504 — Source I 5523			x			✓ 12-5
2016	2005 Payments to Prehn Bates Nos. Source I 5524 — Source I 5540			x			✓ 12-5
2017	2006 Payments to Prehn Bates Nos. Source I 5541 — Source I 5578			x			
2018	2007 Payments to Prehn Bates Nos. Source I 5579 — Source I 5613			x			
2019	2008 Payments to Prehn Bates Nos. Source I 5614 — Source I 5644			x			
2020	2009 Payments to Prehn Bates Nos. Source I 5645 — Source I 5670			x			
2021	2010 Payments to Prehn Bates Nos. Source I 5671 — Source I 5696			x			
2022	2011 Payments to Prehn Bates Nos. Source I 5697 — Source I 5710			x			
2023	2012 Payments to Prehn Bates Nos. Source I 5711, 1996, 2005, 2026-2027, 2037 — Source I 5710			x			

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A.M. _____ FILED P.M. 402

DEC 23 2013

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' CLOSING ARGUMENT

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), and hereby submit their written closing argument:

I. UNDISPUTED FACTS

In 2010, Plaintiff, Donnelly Prehn (hereinafter "Prehn") and Hodge's business relationship and friendship was starting to deteriorate based on Prehn's conduct and they could no longer work together. Neither trusted the other concerning the management of Source 1.

In 2011, Prehn stepped down as a working member for Source 1. That year, the Company enjoyed its largest net profit in its eight (8) year history. Despite the Company's success, Prehn continued to disagree with the management by Hodge.

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In January of 2012, Donnelly Prehn proposed a buyout of his shares or in the alternative a buyout of Hodge.

An appraisal of the going concern value of Source 1 was prepared by the Bristol Group and Hodge extended an offer to Prehn for $417,000. Prehn presented a counter-offer to Hodge of over $635,000 and the deal fell through.

On April 4, 2012, Hodge sent an email to all members voting to dissolve Source 1 effective April 1, 2012. Within 15 minutes, Prehn also voted to dissolve the company effective April 1, 2012. Thereafter, all members unanimously voted to dissolve Source 1. Hodge advised the members he would get Michael Baldner, then Source 1's attorney and Neal Stuart, the company's CPA, involved in closing the company.

All members authorized, ratified and cashed their respective 2010 and 2011 profit distributions.

On April 13, 2013, all members were present in the telephone conference with Source 1's former attorney, Michael Baldner, who explained the dissolution and wind up process, as well as, generally answered questions asked by the members based on his belief and interpretation of the law.

On April 27, 2013, Plaintiffs on behalf of themselves and Source 1 filed and served a derivative action complaint on Defendants alleging 13 causes of action.

On May 3, 2013, Plaintiffs filed their Application for Temporary Restraining Order and Motion for Preliminary Injunction which was scheduled for hearing on May 8, 2013. On May 8th, Prehn, Hodge, George Brown and their respective counsel were present. The parties agreed on the scope and understanding of the dissolution and winding up process of Source 1 which was binding on all named parties in the lawsuit. They reached an agreement on several terms and conditions, specifically they agreed that: 1) THEY WOULD ALL COOPERATE AND PARTICIPATE IN THE PROCESS IN A MANNER THAT WAS TRASNPARENT,

ACCOUNTABLE, FAIR AND EQUITABLE TO ALL MEMBERS TO MAXIMIZE THE RETURN AND FINAL DISTRIBUTION OF THE REMAINING FUNDS; 2) SOURCE 1 WOULD PROCESS APPROXIMATELY $900,000 IN EXISTING PURCHASE ORDERS ("P.O.s"); 3) PREHN AND HODGE WOULD EB RELEASED FROM THEIR RESPECTIVE NON-COMPETE AGREEMENTS WITH THE COMPANY; and 4) THE AUCTION TO SELL ALL OF THE COMPANY'S ASSETS, BOTH TANGIBLE AND INTANGIBLE, WOULD BE HELD ON MAY 18, 2012. The parties' agreement was presented on the record and memorialized by an Order entered on May 17, 2012.

Prior to and in accordance with the Order, Hodge reduced the company's overhead, debts and staff in an effort to maximize the greatest return for all the members.

Hodge sent out proposed auction instructions to all member and participants in the auction, including their respective counsel, for their comments, changes and recommendations. NO OBJECTIONS OR CHANGES WERE SUGGESTED TO THE DESCRIPTIONS OF THE ASSET LOTS PROPOSED IN THE INSTRUCTIONS.

The auction was held and as the highest bidders, Prehn was awarded the shaker cup molds ($96,000) and office inventory ($15,100), while Hodge was awarded the Intellectual Property ($44,200) and embroidery machines ($10,010). Per the auction instructions, Hodge tendered his bid amounts to Source 1. Prehn elected to tender his bid amounts to his attorney's trust account. Prehn's bid amounts were never tendered to Source 1 and are no longer in his attorney's trust account. Prehn's failure to tender his funds to Source 1 resulted in a forfeiture of the assets which reverted them to the second highest bidder, Hodge, which he tendered his bid amounts to the company. Prehn's opinion of the value of all of Source 1's assets was $125,200.

On June 29, 2012, Prehn filed a Second Amended Complaint raising six (6) new causes of action against Defendants all arising from the auction. All six new causes of action, in addition to 3 others raised in the First Complaint have been dismissed with prejudice.

In September of 2012, Source 1 completed processing all of the existing purchase orders reflected in the Order entered on May 17, 2012. Due to errors and inexperience by a former bookkeeper, Jade Welch, the final wind up report was delayed. Miss Welch quit before correcting and reconciling her mistakes which were then corrected and reconciled by the current bookkeeper, Janae Young. Upon its completion, the Final Wind Up Report was provided to all of the members and filed with the Court on January 17, 2013 evidencing a positive balance of approximately $20,000 remaining.

II. PLAINTIFFS' CASE

In their opening statement, Plaintiffs' alleged, among other things, that the evidence would show that 1) Hodge converted hundreds of thousands of dollars from Source I and its members for his personal benefit and new company; 2) Hodge stole Source 1 from the Plaintiffs, and 3) that Source 2 was essentially Source 1 without the Plaintiffs.

Counsel expressed that Prehn felt personally betrayed by Hodge after all the years the two of them sacrificed to form Source 1. One thing is for certain, this lawsuit was personal to Prehn against Hodge and was his attempt and effort to get back at Hodge for no longer wanting to work with him and be his partner.

The following will address each cause of action asserted by Prehn and the evidence admitted in the record:

A. Breach of Agreements for Prehn Loan an Back Salary.

Prehn alleged and testified that he was initially and primarily the source of credit for Source 1 in its early years. Prehn testified that Source 1 lacked liquidity and therefore, he would advance personal funds to the company to ensure that the company could meet its financial obligations and survive. Prehn managed and controlled his advances and allegedly tracked his advances to the company on a spreadsheet entitled "Summary Differential Analysis Equalizing

Economic Benefit Between Mike Hodge and Don Prehn." *See* Plaintiffs' Ex. 86. Prehn testified that his advances/loans accrued interest at an annual rate of 14% and later changed to 10%.

On cross-examination, Prehn did not know how much he advanced to the company in any given month, year or in total and could not determine exact amounts he had advanced to the company on his spreadsheet. Prehn did not know how much the company had repaid him toward his advances. Prehn did not produce nor introduce any checks he issued out to the company evidencing his advances/loans to the company.

Source 1 produced checks Source 1 issued to Prehn throughout the existence of the company. Specifically, Source 1 introduced evidence of all the checks issued to Prehn in 2004 and 2005. *See* Source 1's Exs. 2015 and 2016. Prehn testified that he was not sure what the payments were made for and testified that some of the payments may have been made to pay his salary during those years. However, Prehn alleged and testified that between 2002 through 2005, he did not collect a salary from the company in order to help the company grow which formed the basis of his alleged agreement for back salary owed by the company. Prehn acknowledged that the company did not generate a net profit in 2004 or 2005 and did not make a net profit until 2008 or 2009.

Defendants' Exhibits 1004 and 1005 were documents created by Prehn of his understanding in forming the company with Hodge. In both documents, Prehn acknowledged he would not be paid a salary nor deserved any compensation if the company could not grow past $50,000 in annual profit. Neither of these exhibits reflects any agreement between he and Source 1 agreeing to pay him a back salary for foregoing his salary.

Exhibits 2015 and 2016 show that Prehn was paid a total of $61,839.77 in 2004 and $46,858.27 in 2005, the same years he was allegedly foregoing his salary to help out the company. Yet, Prehn's spreadsheet does not reflect that these payments were credited towards his advances/loans. Instead, Prehn testimony was unclear and suspect as to how he calculated the

cumulative amounts he advanced and payments received in a given month to arrive at a net amount, whether positive or negative showing the balance owed. Since these payments were not made for his salary or distributions for profits generated by the company, the only reason Source 1 would have issued any payments to Prehn would be to reimburse and repay any advances/loans he made to the company. However, Prehn did not record any specific transactions he made or produce any evidence showing what amounts he actually advanced/loaned to company. Prehn relies on the spreadsheet reflected in Plaintiffs' Ex. 168 for the remaining balance he is allegedly owed, but also testified that he did not agree with Jesse Arp's calculation. Prehn acknowledged that the Jesse's spreadsheet was not a document generated by ProfitMaker and was not absolutely certain whether his balance was tracked on ProfitMaker, but could have been, despite his testimony that he brought in and oversaw the ProfitMaker program from 2006 through 2010.

Hodge testified that Prehn's loan was in ProfitMaker and according to Mrs. Young's audit and reconciliation of the balance in ProfitMaker, Prehn had been paid off in full. Prehn testified that the alleged balance owing on his damage summary (Plaintiffs' Ex. 164) less his alleged backsalary of $68,750 consisted of only accrued interest, therefore, confirming that Source 1 had repaid Prehn in full the entire principal amounts he had advanced to the company.

Prehn testified that he did not apply payments toward the accrued interest first, but instead netted out any payments which he testified would have the same effect. Generally, in a loan analysis, payments made would be applied to interest first and any excess amounts thereafter applied to the principal owing, unless otherwise directed by the parties. By applying payments towards the interest first, Source 1's alleged debt, if any, would have been substantially less. Instead, Prehn allowed the unpaid interest to accrue at a far greater rate thus providing Prehn a greater return at the expense of Source 1 and its other members.

Prehn testified that there was no written agreement between he and Source 1 concerning either his loans or back salary. *See* Idaho Code § 9-505(5). There was no evidence of a written agreement between he and Hodge reflecting Hodge personally guaranteeing 35% of these claims.

Prehn failed to prove by a preponderance of the evidence the material terms agreed upon by Source 1 and/or Hodge and to the extent such terms were reflected in the record, Prehn failed to prove with a reasonable degree of certainty of the amounts allegedly owed for his loans and back salary. Furthermore, debts of the company do not render liability against Hodge personally. *See* Ds' Ex. 1003 (p. 9, § 6.7(c)) and Idaho Code § 30-6-304. Source 1 and Hodge respectfully requests this Court dismiss this cause of action.

B. Breach of Operating Agreement and Covenant of Good Faith and Fair Dealing

In their complaint and testimony at trial, Plaintiffs alleged Hodge, personally, breached the operating agreement and covenant of good faith and fair dealing which resulted in damage to them and Source 1. Specifically, Prehn testified that Hodge breached the agreement by making a final distribution with the net profits generated in 2010 and 2011 over his objection. *See* P's and Ds' Exs. 31 and 1046, respectively. The evidence showed that all members received a breakdown of their respective distributions for 2010 and 2011 from Jesse Arp. *See* Ds' Exs. 1043 & 1053.

Despite his email, the undisputed evidence showed that all the members authorized and ratified the foregoing net profit distributions by agreeing, receiving and cashing the distributions both before and after the lawsuit was filed. *See* Ds' Ex. 1007 (cancelled checks in April and May statements). *See also,* Idaho Code § 30-6-409 (6). At no time did Plaintiffs demand that the profit distributions be returned back to Source 1 or assert they were part of the final distribution even after the parties reached an agreement on the scope and understanding of the dissolution and wind up process which was memorialized in an Order dated May 17, 2012. *See* Ex. 2011. At the time Prehn emailed his objection on April 6, 2012, 2 days after the vote to dissolve, he had already retained counsel. In fact, the Order clearly reflected the parties understanding that the

remaining portion of the 2011 distribution of approximately $65,000 were not a final distribution and could have been distributed, but no other funds could. *See* Ex. 2011, ¶ 5.

Prehn testified, acknowledged and admitted that Source 1 still had existing purchase orders to process and the auction of all of the assets which would have generated additional funds for the company before a final distribution could be made. Prehn also testified that if the 2010 and 2011 distributions were a final distribution, then all the members knowingly accepted an improper distribution. Prehn admitted that the Order created a duty amongst all the members to participate and cooperate in the process in a manner which was fully transparent, accountable, fair and equitable to all members. The evidence and testimony presented at trial unequivocally showed that Prehn's actions breached this duty and were intentionally designed to set up Hodge for failure and liability. Prehn's motive for his actions and conduct were set out in the opening statement where he felt a personal betrayal by Hodge.

Prehn failed to prove and show that Hodge's conduct arose to a level of "Disabling Conduct" as defined in the operating agreement for which Hodge could be liable. Therefore, Hodge respectfully requests this Court dismiss this personal and/or derivative claim.

C. Breach of Non-Compete

In their complaint and testimony at trial, Plaintiffs alleged Hodge, personally, breached his non-compete agreement with Source 1 which resulted in damage to them and Source 1.

The testimony and evidence showed that in the telephone conference with Michael Baldner, Prehn and Bandak informed Hodge, Mike Brown and Chris Claiborne of Prehn's intentions to remain in the industry and compete against Hodge. *See* Ps' Ex. 132 (Transcript, p. 20, Ll. 10-14).

Brown testified upon learning of Prehn's intentions to start a new company, he filed Articles of Organization for Source 2. *See* Ps' Ex. 41. In addition, Brown testified that that he contacted ASI Computer Systems to have the ProfitMaker license transferred but could not get its

transferred until the auction was completed. In the meantime, ASI agreed to provide a mirror copy of Source 1's ProfitMaker. Brown testified that the ProfitMaker license was finally transferred to Source 2 in June, 2012, which took place after the release of the non-compete period between Prehn and Hodge on May 18, 2012, after the auction of Source 1' assets and after Prehn decided not to tender his bids for the assets he was awarded, including the ProfitMaker software. Throughout this lawsuit, Source 1 continued to possess its separate version of ProfitMaker in order to prepare a file wind up of the company.

Prehn testified that he and Hodge's non-compete agreement were identical. Prehn was asked what legitimate business interests was Source 1 protecting after all the members unanimously agreed to dissolve the company effective April 1, 2012 and after Mr. Baldner informed all the members that once the members voted to dissolve the company on a date certain, the company would not take on new purchase orders. Prehn responded that Hodge had an unfair advantage in starting his new company against he and Bandak. Prehn admitted the agreement was between Source 1 and the individual and that no agreement existed between he and Hodge regarding each starting new companies to compete. PREHN ADMITTED THAT NEITHER HODGE NOR SOURCE 2 CONVERTED ANY OF THE EXISTING P.O.s REFLECTED IN THE ORDER. Prehn admitted and acknowledged that neither Hodge nor Source 2 processed any purchase orders before the date reflected in the Order. PREHN COULD NOT EXPLAIN OR SHOW HOW SOURCE 1 WAS DAMAGED BY THE ACTIONS TAKEN BY HODGE TO START A NEW COMPANY. *See Westco Autobody Supply, Inc. v. Ernest,* 149 Idaho 881, 892, 243 P.3d 1069 (2010) ("[a]n agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship.").

Prehn argued that the Bodybuilding.com ("BB.com") P.O. submitted on April 9, 2012 (Ps' Ex. 32) was an asset of Source 1 and should have been processed by Source 1. Yet, Prehn admitted that he did not request or demand Hodge to process this P.O. nor was the P.O. part of the

$900,000 of existing P.O.s reflected in the Order that the parties all agreed to. The evidence showed that Hodge on three (3) separate occasions before the hearing on May 8, 2012 advised all the members and their counsel that he would comply with the members' unanimous vote to dissolve and not take on any new P.O.s. and more specifically that BB.com did submit a P.O. in April which he did not accept. *See* Ds' Exs. 1049 & 1058 and Ps' Ex. 163.

Furthermore, the evidence in the record showed that Prehn had the same opportunity and chance to receive the BB.com P.O. before the P.O. was submitted to Source 2 on June 14, 2012. *See* Ds' Ex. 1065 and Ps' Ex. 76. Prehn's complaint that Hodge had an unfair advantage on the P.O. is without merit in light on Prehn's proposals and attempt to attract BB.com's business, even expressing he could save them approximately $800,000 annually if they were willing to do business with him. Despite all of Prehn's representations, he admitted that BB.com rejected both of his proposals to do business with him.

Despite making up over 70% of Source 1's income in 2011, the evidence showed that Source 2's percentage of business with BB.com was substantially less in 2012. *See* Ds' Ex. 1068.

Prehn failed prove by a preponderance of the evidence that Hodge breached his non-compete agreement with Source 1 and to the extent a breach was reflected in the record, Prehn failed to prove with any reasonable degree of certainty of the damages allegedly incurred by Source 1 and Prehn that arose from the alleged breach. Hodge respectfully requests this Court dismiss this cause of action.

D. <u>Breach of Fiduciary Duty and Hodge's Loan to Source 1.</u>

In their complaint and testimony at trial, Plaintiffs alleged Hodge breached his fiduciary duty with Source 1 which resulted in damage to them <u>and</u> Source 1.

Prehn argued that Hodge breached his duty on number of things, including the company allegedly lost money and did not make a final distribution, that the salary he made was inflated and unreasonable, that he purchased a commercial building and charged rent to Source 1 during

the dissolution, he held an unconscionable auction, he inflated the overhead expenses and the BB.com P.O. referenced above.

In creating Ps' Ex. 165 and 166, Prehn based his experience and training on a website known as bizequity.com. Prehn admitted that his net profit percentages for 2011 and January through March 2012 which he used to arrive at his weighted net profit average was based on the company as a going concern. Prehn also admitted that the net loss between April through December 2012 was based on the company in the mist of the liquidation process. Despite analyzing the company in the liquidation process, he testified that he would expect the company to have a net profit inflation rather than erosion in the liquidation process. Prehn admitted that the company's potential revenue was fixed and no new revenue other than that reflected in the Order was generated by the company. Prehn finally admitted that the company would have incurred some variable and fixed expenses winding up albeit he did not explain specifically which expenses would be reasonably incurred. Prehn denied that the appropriate analysis for determining the alleged damages Source 1 supposedly suffered would have been to look at the expenses and only those expenses and not a weighted profit margin.

In response to Prehn's methodology, Peter Butler, a certified business appraiser with extensive credentials, testified based on a reasonable degree of economic and financial certainty that the calculations reflected on Ps' Exs. 165 and 166 were not an accurate and reliable reflection of the damages sustained by Source 1 in the dissolution process. Mr. Butler explained that Prehn's calculations was merely an exercise of mathematics, but conceptually flawed, speculative and artificially inflated. Mr. Butler testified that applying a going concern analysis to a company under liquidation was comparing apples to oranges. He testified that he would have expected margin erosion for a company in liquidation because revenue is fixed unlike a company operating as a going concern where it is continually trying to generate revenue to offset expenses corroborating Hodge's statement to the members and counsel that process the existing P.O.s

would generate a negative return to the members. *See* Ps' Ex. 163. He testified that Prehn's calculations did not take into consideration extraordinary expenses which would not have been incurred but for the litigation initiated by Prehn. He also testified that the appropriate way to have estimated any alleged damages sustained by Source 1 would have been to review the expenses during the liquidation process to determine which expenses were excessive or unrelated to the liquidation. Based on his review of Exs. 165 and 166 there was no readily ascertainable way to determine which expenses, if any, were excessive or unreasonable.

On cross-examination, counsel attempted to attack his opinion based on a number of assumptions he did not consider such as any alleged inflation of overhead expenses, delay in the completion of the P.O.s, representations made by Hodge and Brown about completing the dissolution in 2 months and other expense factors. Instead, the cross-examination further confirmed and corroborated Mr. Butler's opinion that Prehn's analysis reflected in those exhibits was flawed, speculative and erroneous. Mr. Butler agreed with counsel that these factors could and should have been considered and evaluated in determining whether any alleged damages was sustained by Source 1. However, he made it clear that Prehn's calculations did not consider those factors, but instead used an erroneous profit margin analysis to the liquidation process. It was impossible to determine what amount, if any, in Prehn's net loss calculation was associated with reasonable and proper expenses versus unreasonable and excessive expenses in determining any damages.

As for Hodge's salary, the evidence showed that in 2011, Hodge's gross salary was $144,000 or $12,000 per month. The operating agreement expresses that the manager's salary shall be fixed from time to time per the majority vote (Ds' Ex. 1003, p. 8, § 6.5) and the liquidator shall receive reasonable compensation for services performed (*Id.,* p. 22, § 14.2). Nowhere in the operating agreement does it require a yearly vote to fix the foregoing compensation. Furthermore, Prehn presented no evidence of what constituted "reasonable compensation." There

was no evidence of how "reasonable compensation" is determined for a liquidator, whether its based hourly, by salary, contingency or fair market value. Hodge reduced his gross monthly salary by $2,000 to repay back his loan to Source 1, in addition, to personally assuming Source 1's debt to Syringa bank for the truck which Prehn was also a personal guarantor on. *See* Ds' Exs. 1014 and 1056. By assuming Source 1's debt and the reduction of his gross monthly salary previously voted by the members, Hodge repaid and/or saved Source 1 approximately $47,000 for a $20,000 loan he owed the company. Hodge should receive an offset for damages, if any, incurred by Source 1 and Prehn as result of the savings.

Hodge testified he entered into a six month lease agreement with an option to buy on behalf of Source 1 in the fall of 2011 at the location where Source 2 now currently occupies. At the time, Hodge was uncertain whether the purchase would be done by the company or him personally. *See* Ds' Ex. 1025. At the time, there was no contemplation of Source 1 dissolving. Prehn argued that Hodge inflated the rent on Source 1 after he purchased and closed on the property on April 5, 2012. Prehn asserted that Source 1's rent under the lease was $2,900. *See* Ps' Ex. 15. However, Prehn did not explain that in addition to base rent, the lease agreement with Neilhoff, LLC was a true triple net lease wherein Source 1 was also responsible for all other expenses, including property taxes, association fees, maintenance, utilities, etc... as additional rent thus the expense to occupy and possess the property was greater than simply the base rent alone.

Hodge testified that after acquiring the property, he spoke with Lyle Cook, Vice President of Syringa which processed the loan for the building. Mr. Cook advised Hodge that he should charge fair market rental value which he opined ranged between $12 to $18 per square foot for commercial property in the area. After the vote to dissolve, Hodge did not have Source 1 enter into a written lease agreement and charged it rent on a month to month basis for a set amount. Hodge testified that Source 1 stopped paying rent and utilities on the building at the end of July. The evidence showed Source 1 did not complete the existing P.O.s until September of 2012.

Hodge also testified that Source 2 began paying all of the expenses, including rent and utilities in August, and that the rent charged to Source 1 is the exact same amount charged to Source 2.

As for Prehn's allegations of other inflated overhead expenses, Hodge testified and the records reflect that he reduced the staff to himself, Brown, Jesse Arp and Blair Bews by May 1, 2012. He explained that Bews and Brown were taken off Source 1's payroll in July, 2012 despite continuing to complete the existing P.O.s., leaving Hodge and the bookkeeper on the payroll. Hodge testified that he immediately began to close accounts and other liabilities of Source 1 in the effort to reduce overhead expenses. *See* Ds' Exs. 1009, 1013, 1049, 1073, and1074. Prehn did not produce any credible evidence of any specific overhead expenses that were inflated, unreasonable, excessive or not related in any way to the dissolution process of Source 1.

It is anticipated that Prehn will argue that Source 1 funds were withdrawn for Hodge in the amounts of $49,680, $7,000 and $2,300 showing that he was taking Source 1 funds to benefit Source 2. However, the evidence showed the funds withdrawn by Jade Welch, the former bookkeeper, were taken from the wrong account and subsequently all returned back to Source 1's account by early December after the error was discovered by Judy Geier, Source 1's former counsel. *See* Ds' Exs. 1006 and 1007 (December statements). Miss Welch testified that she had no experience on ProfitMaker and received minimal training from Jesse Arp. She also stated that she recalled speaking with Ms. Geier, but could not recall the specific details about the conversation. Her testimony and credibility was suspect in light of the facts she could not recall when she was hired, how long she worked there and during what months she worked there. On cross, she stated that she tried hard to forget her experience at Source 1. In addition, she testified she created Source 2's October Balance Sheet which specifically identified Hodge's loan to Source 2. *See* Ps' 117. She could not recall that it was her that transferred back the funds from Source 2 to Source 1.

Janae Young, the current book keeper, arrived shortly after Miss Welch quit in December and testified that her first order of business was to reconcile Source 1's financial books and records. She explained that she obtained the assistance from ASI representatives, Ms. Geier and Neal Stuart's office to help her through the reconciliation process. She started her investigation and reconciliation in June 2012 and found that all the general entries and ledgers were correct and accurate until about September, 2012 which was the time Miss Welch took over Source 1's books. Mrs. Young testified that from September forward, she discovered a number of inconsistencies, unsubstantiated figures entered into the financial records to force balancing and undocumented entries. Mrs. Young's testimony clearly explained that Miss Welch did not know what she was doing. She corrected and reconciled Source 1's financial records and a Final Wind Up Report was filed with the Court on January 17, 2013.

Mrs. Young explained all of the money transfers made between Source 1 and Source 2 and provided descriptions for the transfers. *See* Ds' Ex. 1012.

Finally, Prehn argued that Hodge held an unconscionable auction. He testified that the auction was complicated and confusing despite having counsel representing their interest. He admitted that Hodge submitted proposed auction instructions to all the members, participants and their counsel for comment and that he did make some recommendations and changes to the instructions, but that Hodge was hostile and would not accept any other recommendations. Prehn did not explain what other material changes he wanted incorporated into the instructions. On cross, Prehn acknowledged that his primary concern with the auction was the process where he wanted a live auction rather than the 3 bid process. His fear was that Hodge had an unfair advantage by seeing everyone else's bid before he made his bid. To alleviate Prehn's concerns, Hodge agreed to submit his bid 5 minutes in advance of the other participant's bids. The issue of the process was moot as Prehn was the highest bidder for the shaker cup molds and office inventory. *See* Ds' Exs. 1060, 1061 and 1062. There was no dispute that Hodge was the highest

bidder for the intellectual property and embroidery machine and tendered his bids to Source 1's account.

Prehn testified that Hodge never disclosed Source 1 was in the process of acquiring a second mold, however, the evidence in the record undeniably demonstrated that Prehn's testimony was false. Not only was the second mold disclosed to all the members in the March board meeting (Ds' Ex. 1001, Tr., p. 24, Ll. 6-11), but Prehn had actual knowledge of the mold before the auction was held and never inquired where it fell in the lot descriptions. *See* Ds' Ex. 1059. Prehn's excuse for not inquiring was that Ed Butkevich told him about the second mold in confidence and feared retaliation from Hodge.

Prehn could not explain what he thought intellectual property meant, although he acknowledged that it would include trade secrets. In the instructions, Hodge defined intellectual property in general as "This will consist of all goodwill in the company as well as all non-tangible property of The Source Store, LLC." Thereafter, Hodge provided some examples and asked the membership to provide him any further suggestions about intellectual property.

Prehn's complaint alleged Hodge violated Idaho's Trade Secrets Act defining Source 1's confidential information which included designs. This claim was dismissed with prejudice prior to trial. Furthermore, Prehn filed his Second Amended Complaint on June 29, 2012 asserting verbatim his First Amended Complaint and adding six new causes of action, all arising from the facts and circumstances at the auction. All six causes of action were dismissed with prejudice prior to trial, including Prehn's claim for declaratory relief of whether the shaker cup contained any "protectable intellectual property of Hodge." *See* Second Amended Complaint.

Prehn's theory of the unconscionable auction is premised on a letter Hodge's counsel submitted to his counsel. *See* Ps' Ex. 71. However, Prehn admitted that the foregoing letter was in response to his counsel's email he directed him to send. Prehn testified that immediately after the auction concluded he felt something was wrong because Hodge was so happy despite not

being present with Hodge at the time. Then Prehn stated that he felt something was wrong when he received an invoice from Jesse Arp shortly after the conclusion of the auction. The instructions specifically noted that Jesse would be sending out invoices immediately. *See* Ds' Ex. 1060. Prehn's intuition after the conclusion of the auction led him to have his attorney clarify the status of the shaker cup molds.

Hodge testified that the purpose of his counsel's letter was not to prohibit or prevent Prehn from using the shaker cup molds, but to protect his intellectual property that he just acquired for $44,200. Prehn's highest bid on the intellectual property was $5,100. *See* Ds' Ex. 1061. On cross, it was intimated that Prehn could have worked out a deal with Hodge such as a license agreement to use his intellectual property which Hodge agreed. However, there was no evidence that Prehn suggested a license agreement which Hodge refused. Notwithstanding, Prehn's entire argument concerning the auction process is moot based on the dismissal of his claims, but further illustrate that he was second guessing his decision to acquire the molds. Prehn tendered his funds to his attorney's trust account in the amount of $111,100, instead of Source 1 per the instructions. He testified those funds were no longer in his attorney's trust account which can be reasonably inferred that those funds, plus more, have gone towards his attorney's fees for this litigation. In addition, he wanted to enter into a joint venture with BB.com in the shaker cup business which would have saved him a substantial sum without having to tender any of his monies to Source 1. *See* Ds' Ex. 1065. What the evidence shows is that Prehn made a poor business decision and now attempts to backdoor his decision and blame Hodge for an auction he had a duty to participate and cooperate in a manner which was fully transparent, accountable, fair and equitable to all members. Prehn's poor business decisions do not constitute nor fall on Hodge as disabling conduct.

E. Tortious Interference with Contract:

In their complaint and testimony at trial, Plaintiffs alleged Hodge and Source 2 tortiously interfered with Source1's contract, specifically the BB.com P.O., which resulted in damage to them and Source 1.

In order to prove this theory, Prehn had to show 1) the existence of a contract; 2) knowledge of the contract on the part of the defendant; 3) intentional interference causing breach of the contract; and 4) injury to the plaintiff resulting from the breach. Prehn failed to prove any contract existed between Source 1 and BB.com when the P.O. was submitted. The only contract between Source 1 and BB.com was a discount and rebate program which specifically required that no P.O.s could be processed until receipt of a deposit. *See* Ds' Ex. 1066. Prehn admitted that it was typical for BB.com to submit their deposits two to three weeks after a P.O. was submitted. BB.com would not have submitted its deposit until after the lawsuit was filed which Hodge already advised all the members that Source 1 was not accepting any new P.O.s per the member's vote. Likewise, Prehn testified that he did not advise BB.com that its P.O. was an asset of Source 1 despite being the representative of Source 1's derivative action. No suit had been filed by BB.com alleging Source 1 breached its contractual obligation with them and Prehn did not demand that Hodge process this P.O. as part of the parties' agreement reflected in the Order.

As previously stated, Hodge based his good faith decision on the members' unanimous vote to dissolve the company effective April 1, 2012 and statements made by Michael Baldner at the telephone conference. *See* Ds' Ex. 1044 and Ps' Ex. 132.

F. Constructive Trust and Injunctive Relief

In their complaint and testimony at trial, Plaintiffs alleged Hodge and Source 2 stole the assets of Source 1 and that Source 2 is now Source 1 and therefore the Court should impose a constructive trust and grant injunctive relief for them and Source 1.

It is unclear whether either claim or remedy is viable at this juncture. Shortly after filing his complaint, Prehn moved for a permanent injunction which resulted in an agreement between

all the named parties which was reflected in the Order. Accordingly, the Order dated May 17, 2012 would render any injunctive relief now moot.

As for the constructive trust theory, the evidence does not support this form of equitable relief. On April 4, 2012, ALL the members voted to dissolve Source 1 effective April 1, 2012, including Prehn who responded 15 minutes after the email was sent. Clearly, Prehn's own action showed he no longer wanted to be partners with Hodge and he felt he could do exactly what Hodge could do on his own. Prehn agreed he and Hodge could be released from their non-compete agreements with Source 1. The evidence shows that Prehn could not do what Hodge could do as clearly evidenced by BB.com's rejection of his proposals. There was no evidence of fraud or deception in the email to dissolve the company. Prehn made a conscience decision which he now second guesses, but through no fault of Hodge. Prehn has since realized he is not the "most qualified person" to help customers and he needed Hodge or "the rainmaker" as Hodge was referred to by counsel to compete in the business. Prehn overestimated his worth and ability to continue and compete in the business which now he seeks retribution against Hodge. Source 1 was not stolen from Prehn and Bandak. They simply were incapable to start their own company in the industry. Other than Prehn's attempt to attract BB.com's business, Prehn failed to show any other efforts he and Bandak made to mitigate their damages, if any.

G. <u>Unjust Enrichment</u>

In their complaint and testimony at trial, Plaintiffs alleged Source 2 was unjustly enriched which damaged them <u>and</u> Source 1. Specifically, Prehn claims that the balance of credit owed for a plastic prepayment made to Technology Plastics, as well as, a deposit made for the second mold by Source 1 in March 2012 should be reimbursed back. It is undisputed that the foregoing payments were made prior to the members contemplating any dissolution of the company.

Unjust enrichment is a claim that the defendant has been enriched by the plaintiff and that it would be inequitable for the defendant to retain that benefit without compensating the plaintiff

for the value of the benefit. The measure of damages is not necessarily the value of the money, labor and materials provided by the plaintiff to the defendant, but the amount of benefit the defendant received which would be unjust for the defendant to retain.

As for the plastic prepayment of $18,408, both Brown and Hodge testified they were unaware of this credit until it was raised in their depositions. Brown testified that the credit balance would not have been known until all of Source 1's shaker cup orders were completed which finalized in September, 2012. Both admitted and agreed that Source 2 received and used the balance of the credit available with Technology Plastics for Source 2 shaker cup orders. In addition, both admitted and agreed that this amount should have been reimbursed back to Source 1.

However, the evidence showed that Source 2 financially assisted and continues to assist Source 1 in winding up and closing the company in excess of $60,000. *See* Ds' Ex. 1013. It is anticipated that Prehn will argue that the percentages which Ex. 1013 was based were provided by Hodge and therefore excessive and unreliable. Notwithstanding, the evidence also showed that Hodge reduced overhead expenses prior to Source 1 fulfilling its P.O.s reflected in the Order which also showed that Source 2 was funding the wind up of Source 1.

As for the deposit of $12,400 made on the second mold, the evidence in the record showed that Prehn was fully aware of this mold before the auction was held. Brown testified that prior to the auction, Blair Bews and Paul Allen of Technology Plastics went to China to inspect the mold at the manufacturer to determine if it was operational and ready for delivery to the U.S. Paul Allen replaced Ed Butkevich for the inspection. Brown testified that both Bews and Allen reported back to both he and Hodge and advised them that the mold was not operational and needed additional work to be done. Hodge testified that he made the decision not to perform more work on the mold and forfeit the deposit because Source 1 did not have the financial means to continue the contract and that based on his past experience with the Patriot Shaker Cup molds

which Prehn oversaw, he knew that fixing the mold to operational status and delivering it to the States would have taken over 6 months.

The testimony and evidence showed that Source 2 paid the remaining balance on the contract of $18,600 in November of 2012. *See* Ds' Ex. 1006 (November statement). Brown testified that the subject mold was delivered to the U.S. in January 2013 and despite being shipped it still needed additional work to be done. The mold did not become operational until March of 2013, over a year after Source 1 made the deposit. Brown testified the total cost to construct, retool and ship the mold was approximately $45,000.

When asked how Prehn would have classified this contract for the second mold, he was uncertain. When asked whether a contract was an intangible asset and whether he recalled Mr. Baldner classifying the non-compete contracts as intangible assets, he again was uncertain and said the status was a legal question. *See* Ps' Ex. 132 (Tr., p. 18, Ll. 22-15, p. 19, L. 1).

The unfulfilled contract for the second mold, not the deposit, was an asset of the company and it was undisputed that the purpose of the auction held on May 18, 2012 was to sell all of Source 1's assets, both tangible and intangible, as defined under the operating agreement (Ds' Ex. 1003, p. 31). The contract would have been classified as an intangible asset which the evidence showed Hodge acquired the intellectual property which included all of Source 1's intangible assets.

Even though Hodge did not specifically consider or include the second mold as line item asset to the extent it was not a physical and tangible asset located in the United States, the contract fell under the intellectual property description and definition and therefore, Hodge's undisputed acquisition of all of Source 1's intellectual property included this contract, as well as all other contracts, except for "The Source Store's cash on hand, accounts receivables or current open purchase orders" which recommendation was requested by Prehn. *See* Ds' Ex. 1062. Source 1 was not unjustly enriched because Hodge paid $44,200 for all of the intangible assets. Source 1

did in fact receive a reimbursement for the contract when Hodge tendered his bid amount for the intellectual property which was received by the company.

To the extent that Source 2 was unjustly enriched by using the remaining balance of credit from the plastic pre-payment, such amount, if any, should be offset towards financial obligations Source 2 covered on behalf of Source 1. Furthermore, the contract for the second mold was acquired by Hodge in the auction which he tendered and paid Source 1 his bid amount. Source 1 received compensation for the contract, therefore, Source 2 was not unjustly enriched by paying the remaining balance and other costs associated with the contract.

III. PLAINTIFFS' DAMAGES

Prehn's damage summary contains alleged damages incurred by Source 1 in his derivative action ($477,195) and alleged damages he personally incurred ($394,263). As explained above, Prehn has failed to meet his burden in proving the damages incurred by Source 1 in the derivative action, except for the prepaid plastic credit which Hodge, himself, conceded after it was discovered. Notwithstanding, the evidence at trial also showed that Hodge and Source 2 incurred and continue to incur expenses belonging to and on behalf of Source 1 to wind up and close the company which amounts exceed and offset the amount of the plastic credit.

In addition, Prehn failed to prove that Hodge and Source 2 received improperly paid legal fees from Source 1 and he acknowledged that Hodge was a covered person under the operating agreement which indemnified him in this lawsuit so long as his actions did not constitute disabling conduct as defined in the agreement. *See* Ds' Ex. 1003 (p. 24-26, Art. 15). The testimony explained that Source 2 has been paying the legal fees incurred by Hodge and Source 1. Prehn neglects the fact that Ms. Geier represented Source 1 and Source 1 paid her. This is obvious in light of Ms. Geier withdrawing as Source 1's counsel because there is no more money from Source 1 in light of Prehn's lawsuit. Prehn has failed to prove with a reasonable certainty of

any improperly paid legal fees incurred by Source 1 for Hodge outside of the operating agreement or directly for Source 2.

As for Prehn's lost profits associated with the shaker cup mold, Prehn admitted that the 9 month period was based on his belief of Source 2's inability to compete in the shaker cup business during that time period. The evidence showed he represented to BB.com that he could have a mold constructed and delivered in 6 months. *See* Ds' Ex. 1065. He also admitted that before Source 1 acquired the Patriot Shaker cup, it produced and processed shaker cups orders through China, which Source 2 could have done assuming if Prehn had tendered his bid for the molds to Source 1. His entire claim is premised on his assumption that the auction was unconscionable. As expressed above, his theory has no merit and he, not Hodge, made a conscience decision not to acquire the molds.

Brown testified that even if Source 2 was not awarded the molds, Source 2 would have continued in the business simply by ordering cups through China. Prehn testified that he would have had an exclusive market while Source 2 was creating its own mold. The evidence showed that Prehn's assumption was false and that the customers he allegedly would have had which he had no personal relationship with was speculative. Based on the evidence, Prehn has failed to prove based on a reasonable degree of certainty any lost profits he suffered as result of him not retaining the molds. Rather, his decision not to tender his bid for the molds to Source 1 was the cause for his lost profits, if any.

IV. CONCLUSION

Based on the evidence and testimony, Prehn's motivation for initiating this lawsuit was clear, it was not about damages sustained by Source 1, but rather Prehn's attempt to use the judicial system to exact revenge against Hodge and to retroactively revert Source 1 back to the buyout stage between them before the unanimous vote to dissolve the company was made. This was obvious in dismissing Brown and Cailborne with prejudice from the lawsuit. Again, Prehn

second guessed his decisions not to accept Hodge's buyout offer and to dissolve the company. Despite having little involvement with company's management and operations in 2010 and none since 2011, Prehn believed he could compete against Hodge. Prehn ultimately realized he lacked the business knowhow and relationships with the customers as evidenced by BB.com's rejection despite supposedly saving them approximately $800,000 dollars annually doing business with him. Prehn's inability to start a business to compete against Hodge is not evidence of any alleged disabling conduct by Hodge.

From April 4, 2012 when the members voted unanimously to dissolve until the lawsuit was filed, April 27, 2012, a total of 23 days passed wherein Prehn and Bandak alleged Hodge and the other members committed numerous acts to damage them and Source 1. Prehn failed to prove by a preponderance of the evidence that these alleged acts arose to the level of disabling conduct, let alone, that Source 1 and they were damaged by the alleged conduct.

Prehn made his intentions known when he testified that he could and would have done a better job than Hodge during the dissolution process. That could have been true, but certainly did not evidence that Hodge's actions and decisions constituted disabling conduct and not intended to be in the best interest of the company and its members. Hodge clearly had an incentive to try to maximize the greatest return because he was the largest membership holder in the company. Furthermore, the evidence showed that Hodge's decisions were made in good faith for the best interest of the company and its members and were reasonably based on opinions of professionals such as Michael Baldner, Lyle Cook, Judy Geier and Neal Stuart.

Shortly after the vote to dissolve, Prehn retained counsel and did not disclose it to Hodge or the other members because he was intending to set up Hodge for liability. Prehn did not like the opinions of Mr. Baldner, and preferred those of his counsel, but again, Hodge reasonable reliance on Mr. Baldner's statements did not arise to disabling conduct pursuant to the operating agreement. *See* Ds' Ex. 1003 (p. 8, § 6.6).

Prior to and throughout this lawsuit, Prehn made business decisions that backfired and for which he now regrets and seeks a redo. The poor business decisions were not brought on by Hodge, but instead by Prehn, himself. All members unanimously voted to dissolve effective April 1, 2012 because both Prehn and Hodge believed they could continue in the industry without the other. Hodge has continued forward with Source 2, while Prehn has discontinued his efforts to compete in the industry. Prehn's inability to compete is the basis for his unsubstantiated allegations that Source 1 was stolen from him and Bandak and that Source 2 is essentially Source 1 without them. Obviously, Prehn and Bandak are not members of Source 2 as they voted to dissolve Source 1 so they could start their own company without Hodge, Brown and Claiborne. Furthermore, Source 1 was not stolen from them as they participated in the auction and could have retained certain assets which Prehn elected not to tender the funds to Source 1. All of these acts were based on the decisions made by Prehn.

Based on the evidence and testimony presented at the trial or lack thereof on the Plaintiffs' case, Hodge, Source 1 and Source 2 respectfully request this Court enter Judgment in their favor and dismiss Plaintiffs' complaint and causes of actions presented herein.

DATED this 23rd day of December, 2013.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of December, 2013, a true and correct copy of the foregoing was served upon the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

PLAINTIFFS' CLOSING ARGUMENT

Table of Contents

I. INTRODUCTION

The Defendants Michael Hodge ("Hodge") and The Source, LLC ("Source 2") stole a profitable company, The Source Store, LLC ("Source 1"), which was on an upward trajectory and valued at between $1.3 and $2 million shortly before dissolution. (*Exh. 17.*) The Plaintiffs Donnelly Prehn ("Prehn") and Dwight Bandak ("Bandak"), who together own a 49% minority share of Source 1, received nothing in such dissolution.

In so doing, Hodge violated Source 1's Operating Agreement, violated the Idaho LLC Act, violated the Court's May 17, 2012 Order re: Dissolution ("Dissolution Order"), breached all agreements that were not favorable to him and/or Source 2, and otherwise blatantly disregarded his fiduciary duties as sole manager and self-appointed liquidator of Source 1.

In the end, the Defendants had a mirror-image company immediately operating as an established going concern—Source 2—with the same name, same address, same employees, same assets, same products and same customers as Source 1. To add insult to injury, the Defendants used the money and resources they misappropriated from the Plaintiffs to finance, subsidize and build Source 2, which benefitted from Hodge's actions directly and profoundly.

II. THE APPLICABLE LAW

The Plaintiffs have pursued relief, both legal and equitable, by virtue of ten claims in this case. On behalf of Source 1, the Plaintiffs have pursued causes of action against Hodge for breach of the Operating Agreement (Second Claim), breach of a non-compete agreement (Third Claim), breach of fiduciary duty (Fourth Claim), breach of the covenant of good faith and fair dealing (Fifth Claim), breach of a loan agreement between Hodge and Source 1 (Sixth Claim), and injunctive relief (Thirteenth Claim). Also on behalf of Source 1, the Plaintiffs have pursued causes of action against Source 2 for unjust enrichment (Tenth Claim), tortious interference with contract (Eleventh Claim for Relief), and constructive trust (Twelfth Claim).

The Plaintiffs have also pursued relief for injuries that are not common to all members of Source 1. First, Prehn pursued damages directly from Source 1 and Hodge for breach of a loan and back salary agreement (First Claim). Second, the Plaintiffs pursued direct causes of action against Hodge for damages to Prehn and Bandak resulting from Hodge's breach of the Operating Agreement, breach of fiduciary duty, and breach of the covenant of good faith and fair dealing in the conduct of the liquidation, and the auction in particular.

Idaho law governing the foregoing causes of action is straightforward. First, the elements of a cause of action for breach of contract or breach of an agreement are (a) the existence of a valid contract, (b) the breach of the contract, (c) damages due to such breach, and (d) the amount of those damages. *Mosell Equities, LLC v. Berryhill & Company, Inc.*, 154 Idaho 269, 278 (2013).

Second, to prove a claim for breach of fiduciary duty, a plaintiff must establish that the defendant owed the plaintiff a fiduciary duty, and that the fiduciary duty was breached. *Mitchell v. Barendregt*, 120 Idaho 837 (1991). As a fiduciary, a manager is "bound to exercise the utmost good faith" in managing the company. *Steelman v. Mallory*, 110 Idaho 510, 513 (1986). Under Idaho law, the manager of a manager-managed limited liability such as Source 1 owes the fiduciary duties of loyalty and care to the company and the members, which duties are expressly enumerated in Idaho Code Section 30-6-409. In particular, a manager owes a duty of loyalty to the company and its members:

> (a) To account to the company and to hold as trustee for it any property, profit or benefit derived by the [manager][1];
>
> (i) In the conduct or winding up of the company's activities;

[1] Subsection (7) of Section 30-6-409 provides that, in the case of a manager-managed company, Subsections (1), (2), (3) and (5) of the statute apply to the manager and not the members.

(ii) From a use by the [manager] of the company's property; or

(iii) From the appropriation of a limited liability company opportunity;

(b) To refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(c) To refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

I.C. § 30-6-409(2).

Third, the covenant of good faith and fair dealing is implied by law in every contract. *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 750 (2000). The covenant requires that the parties perform, in good faith, the obligations imposed by their agreement, and a violation of the covenant occurs when either party violates, nullifies or significantly impairs any benefit of the contract. *Id.* The "amorphous concept of bad faith" has been rejected as a standard for determining whether the covenant has been breached. *Independence Lead Mines v. Hecla Mining co.*, 143 Idaho 22, 26 (2006). Instead, a court must focus on whether the parties have acted in good faith in performing the contractual provisions. *Id.*

Fourth, a claim for unjust enrichment requires proof of three elements: (1) the plaintiff confers a benefit upon the defendant; (2) the defendant appreciates the benefit; and (3) the defendant accepts the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof. *Vanderford Co., Inc. v. Knudson*, 144 Idaho 547, 558 (2007). "The essence of the quasi-contractual theory of unjust enrichment is that the defendant has received a benefit which would be inequitable to retain at least without compensating the plaintiff to the extent that retention is unjust." *Beco Const. v. Bannock Paving*, 118 Idaho 463, 466 (1990).

Fifth, "[t]ortious interference with contract has four elements: (1) the existence of a contract; (2) knowledge of the contract on the part of the defendant; (3) intentional interference causing a breach of the contract; and (4) injury to the plaintiff resulting from the breach." *Wesco Autobody Supply v. Ernest*, 243 P.3d 1069 (2010).

Sixth, a constructive trust arises when "legal title to property has been obtained through actual fraud, misrepresentations, concealments, taking advantage of one's necessities, or under circumstances otherwise rendering it unconscionable for the holder of legal title to retain beneficial interest in property." *Witt v. Jones*, 111 Idaho 165, 168 (1986). Imposition of a constructive trust is an equitable remedy and does not require that the holder of legal title intend to create a trust interest in another. *Davenport v. Burke*, 30 Idaho 599, 608 (1917). A constructive trust arises from the legal title holder's wrongful actions and not from any intent to create a trust. *Id.* A party seeking to impose a constructive trust must prove the facts alleged to give rise to a construct trust by clear and convincing evidence. *Hettinga v. Sybrandy*, 126 Idaho 467, 469 (1994).

Seventh, and finally, an injunction is an equitable remedy and should issue where irreparable injury is threatened. *See O'Baskey v. First Fed. Sav. & Loan Ass'n*, 112 Idaho 1002, 1007 (1987).

III. PLAINTIFFS' CLAIMS AND DAMAGES

As applied to the facts proven in this case, Idaho law governing the foregoing causes of action demands a judgment in favor of the Plaintiffs as to all claims for relief. The Plaintiffs' claims and damages were outlined in and evidenced, in large part, by Prehn's testimony and the exhibits discussed and admitted during such testimony. Moreover, such claims and damages are illustrated on plaintiffs' Exhibit 164, which was admitted into evidence.

All exhibits footnoted in Exhibits 164-167 were also admitted.[2] Set forth below is a brief discussion of each of the nine line items on Exhibit 164 and the relationship of such claims and damages to the ten remaining causes of action in the Plaintiffs' Second Amended Verified Complaint (the "Complaint").

A. Diversion of Source 1 Funds and Unjust Enrichment

Mike Hodge spent ten months and more than $300,000 to process the purchase orders that had already been placed and booked by Source 1 (the "Booked Orders") and wind down the company. It should have taken Hodge two months and less than $50,000.00.

At an April 13, 2012 Source 1 membership meeting, Hodge and Mike Brown ("Brown") indicated that they could get the Booked Orders fully processed and billed with a smaller staff within approximately two months for between $60,000 and $80,000. (*Exh. 132 at 33, ll. 18 – 36, ll. 16.*) Prehn testified that, based on his review of the Booked Orders and what was left to do, he would expect that a couple of Source 1 employees could have finished processing and billing the Booked Orders at a total cost of between $20,000 and $30,000.

The evidence, however, showed that, even if one completely ignores the legal, accounting and IT costs incurred by Source 1 from April through December 2012, it actually cost Source 1 more than $300,000 over the course of 8-10 months to process the Booked Orders. (*Exh. 1009.*) In short, the difference between the cost it took to finish processing the Booked Orders and the cost it ***should*** have taken to finish processing the Booked Orders was between $230,000 and $250,000, even if one accepts Hodge's relatively high initial estimate.

Such missing profit figures—in excess of $200,000—align very closely with the historical margin analysis represented in Exhibits 165 and 166. Exhibit 165 shows Source 1's

[2] As stipulated by both counsel at the close of the trial, Exhibit bb (footnote 8 in Exhibit 164) is now Exhibit 168, which was admitted.

net profitability in 2011 and the first quarter of 2012, followed by the large loss that followed during the dissolution. Exhibit 166 shows the profits that Source 1 would have expected when it finished processing the Booked Orders, and reflects testimony that selling expenses were unnecessary after the vote to dissolve. Exhibit 166 also shows, using a margin analysis, the dramatic difference between reasonable expectations and the actual results of Hodge's intentional mismanagement and delay tactics.

Peter Butler ("Butler"), the defendants' expert, attacked the margin analysis represented in Exhibits 165 and 166 based exclusively on the fact that such margin analysis was predicated upon Source 1's operation as a "going concern," and not as an entity winding up operations, with continuing "fixed and variable expenses" and without income. And while as a general academic proposition, the points in Butler's testimony were not unsound, he failed to account for the specific nature and size of Source 1's business, and the unique circumstances of this case, including the mirror-image company that continued to operate as a going concern alongside Source 1, and Hodge's obvious disincentive to achieve any real efficiency.

First, at trial it was clear that Butler did not entirely understand the nature of Source 1's business, and specifically what kind of time, labor and other "fixed and variable costs" were involved in processing the Booked Orders. Second, Butler was not aware of prior testimony and evidence indicating that fixed costs to finish processing the Booked Orders would be somewhere between $20,000 and $80,000 (rather than more than $300,000), and by Hodge's own assertion, could be completed by early June, 2012. Most importantly, it was clear that Butler failed to recognize that Source 2 had merely continued the operations of Source 1 as a "going concern." Furthermore, while Butler disputed any suggestion that Hodge had an incentive to collect the enormous Source 1 salary for any longer than necessary because an

efficient wind-up would, in theory, benefit Hodge as a shareholder, Butler had obviously not been informed of Hodge's negative capital account and the loan he owed to Source 1. (*Exh. 171, E-mail from Source 1 attorney Baldner to Hodge stating: "If we dissolve before anyone else gets anything, everyone gets back their original contributions.* ***We don't want this.***")

In sum, Butler did not have the facts necessary to assess whether Hodge purposely mismanaged Source 1 during dissolution, nor whether there was missing money as a result of unnecessary expenses and excessive delay. Prehn presented those facts. Butler offered only a broad and prefatory evaluation of the distinction between a "going concern," and an entity winding up, neglecting to consider any of the specifics that make this case unique, such as what "fixed and variable expenses" were actually necessary, Source 2's existence as a "going concern" carrying on the business of Source 1 without interruption, and Hodge's conflicted responsibilities as Source 1 liquidator, Source 1 manager, Source 2 manager, Source 2's 78% owner, and landlord for both entities.

Additionally, even if one accepts Butler's opinion at face value, it only reduces the calculation of missing profits, but does not eliminate or explain the dramatic losses associated with inefficiently processing the Booked Orders. Not only did Butler fail to address such critical issues, but it was clear that the facts upon which Butler relied concerning the reasonableness of the fixed costs associated with the wind-up were provided by Janae Young ("Young"), who in turn received such information, including arbitrary and self-serving allocations of costs between Source 1 and Source 2, solely and directly from Hodge.

The more than $200,000 of missing Source 1 profits illustrates Hodge's misconduct as manager and liquidator, and specifically his "disabling conduct" under the Operating Agreement, breach of the Operating Agreement, breach of fiduciary duty, and breach

of the covenant of good faith and fair dealing. Hodge told Jesse Arp he intended to "***bleed the company dry***" in order to avoid paying the Plaintiffs their fair share, and he did.

B. Hodge's Compensation as Liquidator

Hodge and Source 2 must pay back Hodge's Source 1 liquidator's salary. The evidence showed that Hodge unilaterally decided that Source 1 must pay him an exorbitant salary, amounting to more than $100,000 over the course of the liquidation, even though the Operating Agreement dictates "reasonable compensation," and despite the fact that Hodge spent virtually all of his time working against Source 1's interests and for the benefit of Source 2.

The Source 1 Operating Agreement provides, in pertinent part, that "any Member who performs more than *de minimus* services in completing the winding up and termination of the Company pursuant to Article 14 shall be entitled to receive ***reasonable compensation for services performed.***" (*Exh. 1 at 22, ¶ 14.2.*)

For the liquidation period between April 2012 and January 2013, Hodge paid himself $103,386 from Source 1 accounts. (*Exh. 1009.*)[3] Beyond consulting counsel and setting up and holding the auction (discussed *infra*), Hodge never identified what, if any, services he performed for Source 1 during the dissolution process. The testimony of Hodge, Brown and Prehn all reinforced that Hodge had been Source 1's salesman—***its only true salesman***. (*Exh. 12.*) In fact, that was the reason Hodge had demanded, and received, an increase in annual salary from $60,000 plus 10% of net profits in 2010 to $144,000 in 2011. Sales for Source 1, however, were entirely unnecessary during the dissolution.

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[3] $123,510 (December 2012 Income Statement, YTD Guaranteed Payments MH, GL# 905), **plus** $6,000 (January 2013 Income Statement, Guaranteed Payments MH, GL# 905), **less** $26,124 (March 2012 Income Statement, YTD Guaranteed Payments MH, GL# 905)

On the other hand, sales were critical to Source 2, which continued the Source business in a seamless transition during the last three quarters of 2012, doing more than $1 million in sales. (*Exh. 123, December 2012 Source 2 Profit and Loss Statement, YTD Sales, GL# 300.*) As with Source 1, Hodge was Source 2's only salesman, and he acted quickly on behalf of Source 2 to ensure that seamless transition. Testimony from all witnesses, including Brown, confirmed that Hodge was out selling for Source 2 throughout 2012. Jade Welch testified that, during her time working in the Source offices, Hodge was only in the office 10-15% of business hours, which time was often spent on personal matters. Significantly, in contrast to Hodge's six-figure salary from Source 1 (even though Source 1 was not selling), Hodge was only paid $10,000 by Source 2 during the entire 2012 fiscal year. (*Exh. 123, December 2012 Source 2 Profit and Loss Statement, YTD Guaranteed Payments MH, GL# 905.*)

In short, at Hodge's direction, Source 1 paid Hodge more than $100,000 to simply preside as a figurehead over a process that required no selling and very little overhead. There existed no incentive for Hodge to ensure efficiency in processing the Booked Orders because (a) Source 1 was paying him, on average, $10,000 per month throughout the process; (b) Hodge had a negative capital account with Source 1; (c) Source 1 paid the salary of several Source 1 employees who were also working for Source 2 in the months immediately following dissolution; (d) Source 1 paid a substantial lease payment to Hodge, LLC, a company owned by Hodge; (e) Source 2 was up and running with Hodge, Brown and Claiborne as members, and (f) Source 2 was employing the former Source 1 staff. The only persons that would feel the pain of his contrived inefficiency were the Plaintiffs. Equally important, Hodge's new business, Source 2, still needed to sell products, and Hodge was able to do such selling, and collect a six-figure salesman's salary, without charging such salary to his new company.

The manner in which Hodge collected completely unreasonable compensation from Source 1 for undisclosed and unclear "services performed," while working as a salesman for the benefit and profitability of Source 2 during the Source 1 dissolution, constituted "disabling conduct" under the Operating Agreement, a breach of his fiduciary duties of loyalty and care to Source 1, and a breach of the covenant of good faith and fair dealing. Furthermore, Source 1 paid Hodge's exorbitant salary while Hodge worked for Source 2's benefit, and Source 2 appreciated and unjustly accepted such benefit.

It is a well-established principle that a company may avoid or recover compensation paid to an agent who violates his fiduciary duty. *See* RESTATEMENT (2D) OF AGENCY § 469. In light of Hodge's breach of fiduciary duty, detailed throughout this closing, he was not entitled to the $103,386.00 in payments received, and he is personally liable to repay such amounts to Source 1. Source 2 is also liable for such payments because it was unjustly enriched by receiving the benefits of Hodge's work and management while Source 1 paid for it.

C. Prepaid Plastic Deposit

The evidence presented at trial also demonstrated Source 1's unjust enrichment of Source 2 in the form of a prepaid plastic deposit, resulting from Hodge's misconduct. Technology Plastics, with whom Source 1 contracted for production of its shaker cups, issued a credit memo to Source 1 on April 30, 2012, reflecting a deposit from Source 1 in the amount of $36,120 for prepayment of 42,000 pounds of poly pro material. (*Exhs. 65, 1016.*) The credit was to be applied by Technology Plastics to future Source 1 shaker cup orders at a rate of a 9.36 cent discount per shaker cup. (*Exh. 1016 at 3, E-mail dated May 11, 2012 from Adamo to Brown and Arp.*)

According to records provided by the Defendants, Source 1 used only $17,712.17 of such credit, leaving a balance of $18,407.83. (*Exh. 1016 at 2.*) That was a significant Source

1 asset, and the fact that Source 1 should have been reimbursed in such amount was unrebutted. In fact, during the trial, Brown acknowledged that $18,407.83 should be paid back to Source 1.

Such evidence not only demonstrated damages accruing to Source 1, but is one of numerous examples of Hodge's breach of the fiduciary duties of loyalty and care, disabling conduct, and breach of the Operating Agreement. By failing to liquidate a significant asset, Hodge breached the provisions of the Operating Agreement governing liquidation, and by diversion of such Source 1 asset to Source 2, Hodge engaged in disabling conduct and self-dealing, thereby breaching his fiduciary duty to Source 1 and its membership. Source 2's unjust enrichment as a result of such conduct is also apparent.

D. Second Mold Deposit

The liability and damages associated with the deposit for a second shaker cup mold paid by Source 1, which ultimately benefitted Source 2, is similar in many respects to the prepaid plastic deposit. However, it even more clearly illustrates Hodge's deception, non-disclosure and self-dealing in dissolving Source 1 and moving forward with his new mirror-image company, Source 2.

On March 14, 2012, Source 1 paid $12,400 to Thrive Industrial for production of a new shaker cup mold. (*Exh. 39.*) While Hodge noted at trial that ordering a second mold had been the subject of a very general discussion some months earlier, there is no dispute that Hodge never disclosed to Prehn and Bandak, either before or after the auction, that Source 1 had made the decision and actually paid a deposit for the production of a second mold. Furthermore, there is no dispute that Source 2 ultimately paid the remaining $18,600 balance to obtain the second mold (*Exhs. 89, 100, 135*), receiving and appreciating the benefit of Source 1's $12,400 deposit.

The Defendants virtually conceded that Hodge's failure to identify and realize upon Source 1's $12,400 mold deposit breached the Operating Agreement and his duties to

liquidate Source 1. More importantly, however, Hodge's non-disclosure of the second mold was deceptive, constituted self-dealing, and violated his fiduciary duties of loyalty and care. His non-disclosure was not an oversight or reasonable mistake, as the existing mold was the subject of the Source 1 auction designee and overseen by Hodge. If Prehn or any other auction participant valued the unique domestic shaker business that Prehn had helped to build, and successfully bid on the existing mold, Hodge had an undisclosed second mold on hand for his own purposes. His new entity, Source 2, would receive the benefit of the deposit as well as the use of the second mold in competition. Hodge sought to ensure that only he knew the true competitive value of the existing mold, or at least to ensure that the Plaintiffs did not. As can be inferred by Hodge's post-auction efforts to preclude Prehn's use of the existing mold (discussed *infra*), non-disclosure of the second mold is evidence of more than just $12,400 in damages. And, it further illustrates Hodge's abuse of his position to benefit himself at the expense of Source 1 members.

Hodge is liable to Source 1 for $12,400 as a result of his breach of fiduciary duty and breach of the Operating Agreement, and Source 2 is also liable to Source 1 because it was unjustly enriched in the amount of $12,400. Source 2's receipt and use of the undisclosed second mold is also further evidence that Source 1's property was ultimately held by Source 2 in a constructive trust for the benefit of Source 1.

E. Loan to Hodge.

Hodge's liability to Source 1 for the loan he received from Source 1 is very straightforward. In 2008, Hodge, charged in a criminal matter, borrowed approximately $40,000 from Source 1 for legal fees. Over time, the balance was reduced to $20,084. (*Exh. 63.*) Hodge, however, asserted to Source 1 membership that, in exchange for assuming the company truck loan of approximately $20,000, his loan balance owed to Source 1 of approximately equivalent value would be forgiven. In making his calculation, Hodge appears to have purposefully failed

to consider the fact that he was also taking ownership of a truck with a value of approximately $20,000. In other words, in exchange for approximately $40,000 in value (the truck and forgiveness of his loan from Source 1), Hodge was assuming a $20,000 liability (the truck loan). Hodge's theory is nonsensical and insufficient to defend his obligation to repay Source 1 for the loan he received. Hodge is liable to Source 1 in the amount of $20,084.

In addition to constituting proof of Hodge's liability and Source 1's damages for breach of the loan agreement, Hodge's conduct in this connection further illustrates his breach of the Operating Agreement, and breach of his fiduciary duties. Hodge's bizarre math was nothing more than an unconvincing attempt to steal from the membership of Source 1 by avoiding his loan obligations. It is also another example of Hodge's purposeful ignorance and reliably self-serving approach to the unnecessarily expensive and lengthy 10-month process of dissolution.

F. Improperly Paid Legal Fees

Under the Source 1 Operating Agreement, Source 1 is obligated to exculpate, defend and indemnify covered persons, including the Source 1 manager, Hodge, for claims related to his acts or omissions. Such obligation is only imposed upon Source 1, however, to the extent that Hodge's acts or omissions were made (a) in good faith; (b) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of Hodge's authority; ***and*** (c) the acts or omissions did not constitute "disabling conduct." (*Exh. 1 at 24-25, §§ 15.2, 15.3.*) "**Disabling conduct**" is "any act or failure to act which (a) constitutes gross negligence, willful conduct or fraud, (b) is taken in bad faith, (c) involves a knowing violation of law, or (d) is done in reckless disregard of the duties involved in the conduct of one's position." (*Id. at 28.*)

As the evidence presented at trial shows, and as summarized in this brief, Hodge's acts and omissions as the Source 1 manager and liquidator meet none of the requirements for

exculpation and indemnification. Hodge did not act in good faith, or with the reasonable belief that it was in Source 1's best interests, when he unilaterally set his Source 1 post-dissolution salary at approximately $10,000 per month and proceeded to develop $1 million in sales for Source 2 (at virtually no cost to Source 2). He engaged in bad faith and willful conduct when, after purchasing the Source 1 office building (on April 5) right after members voted to dissolve (on April 4), Hodge doubled Source 1's rent and demanded a large lease pre-payment. He was not acting with the reasonable belief that it was in Source 1's best interest to unilaterally elect not to process a $223,000 BodyBuilding.com re-order placed with Source 1 (which re-order Hodge testified consisted of products previously provided by Source 1, and thus was not subject to the same level of sampling and review by the customer prior to delivery) and instead process such re-order through Source 2. Hodge was, at best, grossly negligent when he failed to identify and liquidate an $18,407 credit for pre-paid plastic due and owing to Source 1, and thereafter proceeded to allow Source 2 to utilize such credit at no cost. Hodge acted in bad faith and in reckless disregard for his inherently conflicted duties by failing to disclose the existence of a second mold for which Source 1 had paid a deposit, which second mold eventually ended up in the possession of Source 2. And there can be no dispute that Hodge acted with, at a minimum, gross negligence and likely in knowing violation of the Dissolution Order, when he took a personal loan of $49,640 from Source 1's dissolution account. The foregoing are mere examples, a selection, of Hodge's inexcusable acts and omissions. From April 2012 forward, with every move as manager and liquidator of Source 1, Hodge acted for his own benefit or the benefit of Source 2, and against the interests of Source 1 and its minority membership. Hodge does not meet the requirements for exculpation from Source 1.

At a minimum, Source 1 advanced $20,000 to counsel for Hodge and Source 2 in 2012, by the admission of Young, the Source 1 bookkeeper, at trial. It is clear that Source 1 owed no duty to defend or indemnify Source 2 at all or under any circumstance, and in light of Hodge's conduct, neither did Source 1 owe Hodge any duty to defend or indemnify.

Moreover, there exists no evidence that, in accordance with the requirements of Section 15.5 of the Operating Agreement, Hodge ever submitted to Source 1 an "undertaking" to repay any advance by Source 1 if it is adjudged that he is not entitled to exculpation. (*Exh. 1 at 25, § 15.5.*) Because Hodge never executed such an undertaking, his decision as manager of Source 1 to use Source 1 funds for his own defense "in advance of final disposition" of the instant proceedings violated the Operating Agreement and was in excess of his authority.

Source 1 is entitled to a judgment ordering Hodge to repay any legal expenditures Source 1 made to Hodge's counsel on his behalf, or on behalf of Source 2, in this case. At a minimum, such judgment must be in the amount of $20,000. However, in light of Hodge's failure to comply with Section 3.6 of the Operating Agreement by reporting indemnification advances to all Source 1 members (*Exh. 1 at 4, § 3.6*), the Plaintiffs request an order for Hodge to comply with Section 3.6, as well as a post-judgment hearing to determine what expenses in excess of $20,000 may have been paid by Source 1 in defense of Hodge or Source 2.

G. Lost Proceeds Due to Rigged Auction

Hodge's deceitful conduct related to the May 18, 2012 auction of certain Source 1 assets—emblematic of his efforts to squeeze and defraud the Plaintiffs—shows his personal liability to Source 1 for breach of the Operating Agreement, breach of his fiduciary duty and breach of the covenant of good faith and fair dealing.

The members agreed that an auction of certain Source 1 assets was required and Hodge prepared a list of four auction lots. Auction Lot 1 consisted "all 5 of the molds that are

use [*sic*] at Technology Plastic to complete the 'Patriot Shaker'." (*Exh. 72 at 4.*) Technology Plastics valued the molds at $1,900 as scrap metal and between $40,000 and $50,000 as operating molds. (*Exh. 66.*) Auction Lot 4 was Source 1 intellectual property, which consisted of Source 1's goodwill and the "Names, Logo's, concepts, artwork, Product names, Website, Face book, Race concept" of Source 1. (*Exh. 72 at 5.*)

Prehn successfully bid $96,000 on the molds, and won another auction lot related to office inventory. (*Id. at 1.*) Hodge successfully bid on the embroidery machines and the intellectual property. (*Id.*) Without knowing whether his bid for Source 1's intellectual property would be successful, Hodge bid $40,200 for the molds, to be used to produce cups, and not for the scrap value. (*Id.* at 7.)

Immediately after the auction, however, Hodge advised Prehn and Technology Plastics (who actually operated the molds during cup production) that the molds could not be used by Prehn for their intended purpose—producing plastic cups—because one must own Source 1's intellectual property to do so. (*Exhs. 71, 73.*) Production would infringe a vaguely described Source 1 property right. (*Id.*) Importantly, Prehn had notified all parties of his intent to remove all "Source" marks and other information from the molds and the allegedly protected "design" of the cups was not a disclosed part of the intellectual property auction lot. Nonetheless, Hodge's underhanded conduct placed the utility of the molds at risk, potentially rendering the molds almost entirely valueless. Prehn deposited the bid amount in his attorney's trust account until the issue could be resolved and requested that Hodge reconsider his position, but Hodge treated the failure to pay over the amount as forfeiture of the bid. Ultimately, Hodge purchased all the auction lots for $105,010. But for Hodge's threats, however, the successful bids on the auction would have resulted in $165,310 in proceeds to Source 1. (*Exh. 72 at 1.*)

Hodge ***deliberately*** deceived the Plaintiffs and failed to conduct the auction proceedings in a fair and equitable manner to ensure the maximum return for Source 1. Hodge's bad faith exploitation of the ambiguity he built into his own auction lot descriptions ultimately resulted in lost auction proceeds for Source 1 in the amount of $60,300, and benefitted Source 2 with the molds. Like all of Hodge's acts and omissions during the course of Source 1's dissolution, Hodge shamelessly pursued his own self-interest, and the interests of Source 2, in conducting the Source 1 auction.

H. Prehn's Back Salary and Loans

Source 1 and Hodge are liable to pay Prehn's back salary and loans. Over several years, as Source 1 built its business, Prehn loaned money to Source 1 so it could make payroll, pay suppliers, and generally, to keep the business afloat. In addition, between July 2002 and December 2005, because the business was struggling, Prehn agreed to defer his monthly salary, which would accrue at the rate of 75% of the monthly salary actually paid to Hodge through 2004, and 100% of the salary actually paid to Hodge through 2005. The balance of the back salary was to be deferred interest free. As of December 29, 2011, the balance of Prehn's loans to Source 1 was $79,232, which accrued interest at 10% per annum. (*Exh. 168.*) As of the same date, the balance of the back salary was $68,750. (*Id. at 5.*) Such amounts were unrefuted by Hodge or Young, except for Hodge's vague reference to possible "mistakes" in the calculations.

After the vote to dissolve, Prehn demanded that the loan and back salary be repaid before distributions to Source 1 members. (*Exh. 31 at 2, ¶ 4.*) Source 1's Operating Agreement specifically provides that the payment of creditors, including member creditors, must occur prior to distributions. (*Exh. 1 at 23, § 14.2(i).*) This accords with Idaho law. *See* I.C. § 30-6-708; I.C. § 30-6-405. Hodge refused to honor Prehn's loans or the agreement regarding Prehn's back

salary (*Exh. 31*), then proceeded to issue distributions in the amount of $131,115 to the Source 1 membership. (*Exh. 44.*)

Source 1 is liable to Prehn in the amount of $157,887 for the loan and back salary, plus interest on the loan amount from March 6, 2013. Hodge, in turn, is personally liable to Source 1 in the amount of any distributions to membership that he authorized in violation of Idaho law, including, at a minimum, the $131,115 in distributions made in April after the vote to dissolve. *See* I.C. § 30-6-406.

I. Plaintiffs' Lost Profits on Shaker Cup Sales

In addition to Hodge's liability to Source 1 related to his deceptive conduct during the auction process, Hodge is also individually liable to the Plaintiffs for such conduct because his conduct uniquely injured the Plaintiffs. The manager of a manager-managed limited liability company owes fiduciary duties to not only the company, but to its members. *See* I.C. § 30-6-409(1), (7)(a). There is also implied in every contract, including the Operating Agreement, a covenant of good faith and fair dealing. A member may therefore pursue a direct cause of action against the manager of a company for his breach of such duties and covenants if the injury "is not solely the result of an injury suffered or threatened to be suffered by the limited liability company." *See* I.C. § 30-6-901.

As set forth in Section III.D and III.G, *supra*, the manner in which Hodge handled the auction of the molds was unconscionable and one of the most obvious examples of Hodge's bad faith and self-dealing in this case. By failing to identify, disclose and sell rights to the second mold, immediately threatening litigation over the Plaintiffs' use of the existing mold to produce shaker cups, and issuing a cease and desist letter to Technology Plastics, Hodge not only ultimately reduced the proceeds of the auction for Source 1, but he eliminated the Plaintiffs' ability to start a promotional products company using the shaker cup product and supply chain

Prehn had created. Hodge very clearly intended that Source 2 would reap the benefits of his wrongful and anti-competitive conduct.

Prehn testified that the reason he had bid so much for the molds is because there existed a significant demand for shaker cups, and he intended to start a promotional products company with the shakers as a cornerstone. Prehn understood the ***significant market advantage*** of marketing and producing shaker cups domestically. He had designed the cup, developed the relationship with Technology Plastics and the mold factory in China, and knew the customers that purchased shaker cups. Because he understood the domestic shaker cup business and had developed the supply chain, he also had a firm understanding of the minimal overhead required to run a shaker cup business.

Clearly, Hodge's auction bait and switch breached his fiduciary duties to the Plaintiffs and violated the duty of good faith and fair dealing implied in the parties' agreement to sell Source 1's assets in a transparent and fair auction, as well as the covenant implied in the Operating Agreement, which required Source 1 to auction its assets. The damages to the Plaintiffs caused by Hodge's deceptive conduct were derived by evaluating Source 1's historic shaker cup business, and tailoring a new enterprise's overhead and business model to the simple supply chain associated therewith. (*Exhs. 163, 167.*) Since it would take at least nine months for Hodge or Source 2 to create and place a new set of molds into service in the United States, the Plaintiffs expected to generate profits for that time period as set forth in Exhibit 167, and would also have a head start in competing in the domestic shaker cup market thereafter. The Plaintiffs were individually damaged in the amount of $236,376. (*Exh. 167.*) Butler, the Defendants' damages expert, did not refute Prehn's analysis, notwithstanding the fact that Butler was provided and presumably analyzed Exhibit 167.

Not only did Hodge's auction misconduct and bad faith harm Source 1, but as the foregoing demonstrates, his misconduct directly and independently injured the Plaintiffs' business interests. Hodge is therefore liable for damages to the Plaintiffs in the amount of $236,376 for lost shaker cup profits, which damages were unrefuted, even by Butler.

IV. HODGE'S ADDITIONAL BAD ACTS AND DISABLING CONDUCT

In addition to the bad faith, misconduct and gross mismanagement detailed above, Prehn testified at trial that he could provide numerous additional examples of the same, and specifically discussed four discrete examples illustrative of Hodge's deception and pattern of conduct before and during the dissolution.

A. Office Lease / Property Purchase

Without disclosing it to the Plaintiffs, Hodge moved Source 1's offices to 3637 N. Lake Harbor Lane in late 2011, and began negotiating a purchase of that property in his individual capacity. Prehn only became aware of the move, and Hodge's intent to purchase the property, because Jesse Arp warned him that Hodge planned to convince Prehn to sign a credit line renewal for Source 1 that would ultimately make it easier for Hodge to qualify for the commercial loan he needed to purchase the property. From November 2011 through March 2012, Source 1 paid $2,900 per month in rent at that location. (*Exhs. 15, 35.*) On April 5, the day after the vote to dissolve, Hodge closed on the property. (*Exhibit 1045.*) Hodge, LLC became Source 1's landlord, and immediately raised Source 1's rent from $2,900 per month to $5,700 per month. (*Exhs. 27, 82.*) In other words, not only did Hodge usurp a Source 1 corporate opportunity by working towards the purchase of the property without disclosing the same to the full Source 1 membership, but he utilized his conflicted position as both Source 1's landlord and Source 1's manager to enrich himself by doubling Source 1's rent. Such conduct clearly violated Hodge's fiduciary duties. *See* I.C. § 30-6-409; *Steelman v. Mallory*,110 Idaho

510, 513-14 (1986). To add insult to injury, and to further illustrate the extent of Hodge's predilection for deception and misrepresentation, on April 16, 2012, ***more than a week after he had closed on the property***, Hodge sent an e-mail to Source 1 members about the dissolution in which he stated as follows: ***"I will work on getting us out of the current lease."*** (*Exh. 40.*)

In discussing a squeeze-out not unlike the case before the Court, the Idaho Supreme Court noted that majority shareholders often squeeze the minority out while protecting their own income stream "by ***exorbitant salaries*** and bonuses to the majority shareholder-officers and perhaps to their relatives, by ***high rental payments for property the corporation leases from majority shareholders***, or by ***unreasonable payments under contracts between the corporation and majority shareholders***." *McCann v. McCann*, 152 Idaho 809, 816 (2012) (quoting F. HODGE O'NEAL & ROBERT B. THOMPSON, Oppression of Minority Shareholders and LLC Members § 3.2 (Rev. 2nd ed. 2004)). In this case, all three of the listed examples are present. Hodge paid himself an enormous salary. Source 1 paid wages and salaries to employees doing primarily Source 2 work. Finally, as the foregoing demonstrates, Hodge also maintained his income stream while" bleeding the company dry" by doubling Source 1's rent.

B. Hodge's Violation of His Non-Compete

Another of Hodge's bad acts to which Prehn testified related to the non-compete agreement that bound Hodge (*Exh. 2*), and sought to protect Source 1 from precisely the type of predations Hodge ultimately used to cheat the Plaintiffs. The Dissolution Order provided that both Hodge and Prehn would continue to be bound by such agreements until May 18, 2012. However, Hodge, Brown (a Source 1 employee who the non-compete agreement forbade Hodge from soliciting), and Claiborne formed Source 2 on April 17, 2012. (*Exh. 41.*) Furthermore, a $223,081 re-order from Source 1's largest and best customer, BodyBuilding.com, was placed with Source 1 on April 9, 2012, but thereafter Hodge caused it to become an asset of Source 2.

(*Exhs. 32, 42, 76.*) Hodge's decision not to realize upon a significant Source 1 asset, and Source 2's re-issuance of such a large purchase order in the name of Source 2, not only violated Hodge's non-compete, but also represented Source 2's tortious interference with a Source 1 contract and unjust enrichment of Source 2. This example of unabashed self-dealing and disregard for the interests of Source 1 membership is consistent with all of the conduct discussed above, suggesting that upon the vote to dissolve, Hodge was immediately working for his interests, and those of Source 2, notwithstanding his still valid non-compete agreement with and fiduciary obligations to Source 1.

C. Transfer of ProfitMaker

Hodge also transferred the ASICS license for Source 1's ProfitMaker software to Source 2 prior to the expiration of his non-compete, before the May 18, 2012 auction, and without compensation to Source 1. ProfitMaker was a critical part of the Company's operations. The initial costs of the software was $8,000, but it was not simply a plug-and-play system. Thousands of employee hours were spent customizing the software platform to suit Source 1's needs. On April 17, 2012, Brown initiated the transfer of the ProfitMaker software to Source 2. (*Exh. 46.*) By April 20, 2012, Hodge had completed the transfer. (*Exhs. 47, 48, 51, 52.*)

Importantly, among the items to be sold at the May 18 auction in Auction Lot 3 was "computer software." Prehn successfully bid on that lot, with the clear understanding that ProfitMaker was part of Auction Lot 3. In fact, as Prehn testified, it was the most important asset in Auction Lot 3. Yet, Hodge never disclosed that ProfitMaker was not part of Auction Lot 3 because it had already improperly been transferred to Source 2. Furthermore, no evidence was ever presented suggesting that Source 1 was reimbursed by Source 2 or Hodge for the ProfitMaker software or its transfer.

D. Treating the Source 1 Dissolution Account as a Source 2 Slush Fund

Paragraph 5 of the Dissolution Order, dated May 17, 2013, provides that "***no funds shall be withdrawn from the Dissolution Account***; provided, however, that bona fide and legitimate costs and expenses ***of Source 1*** arising from the Dissolution and consistent with the parameters set forth in paragraphs 1 and 4 many be paid from the Dissolution Account." (emphasis added). In violation of the Court's Order, Hodge transferred $49,680 from the Dissolution Account into his personal account. (*Exhs. 133, 90, 91, 92, 93.*) At trial, Hodge called the transfer a mistake that was corrected when discovered, suggesting that the money should have come from Source 2's account. Hodge attempted to blame Jade Welch, Source 2's bookkeeper at the time. His attempt was not persuasive, however, as the e-mails between Ms. Welch and Hodge demonstrate. Ms. Welch testified that both she and Hodge understood and knew exactly from and to where the funds were being transferred. Clearly, whether intentional or by gross negligence, Hodge violated the Dissolution Order by loaning either himself or Source 2 nearly $50,000 to get out of a "bind." Such conduct is indicative of the complete lack of respect Hodge has shown, not only for his fiduciary duties to Source 1, but for the authority of this Court.

V. CONCLUSION

For the foregoing reasons, the Plaintiffs have met their burden to prove, by a preponderance of the evidence, Hodge's liability to Source 1 for the damages set forth in the first seven lines of Exhibit 164.[4] Source 1 is also entitled to injunctive relief precluding Hodge from

[4] As set forth on Exhibit 164, the amount of improperly paid legal fees is an estimate, but is no less than $20,000, and subject to change upon Hodge's compliance with the requested order from the Court requiring a statement of amounts paid for purposes of Hodge's exculpation, as well as a further evidentiary hearing, if necessary.

acting further in any capacity on behalf of Source 1, and ordering a full and fair dissolution process and distribution of the assets of Source 1 that may result from any judgment in this case.

Additionally, the Plaintiffs have met their burden to prove, by a preponderance of the evidence, that Source 2 is liable to Source 1 for unjust enrichment and tortious interference with contract. The amount of damages for tortious interference is the expected net profit associated with the misappropriated BodyBuilding.com purchase order--$20,680 (9.27% of $223,081). The amount of damages for unjust enrichment is the amount Source 2 avoided paying Hodge to manage and sell for Source 2, $103,386, the amount of the prepaid plastic deposit, $18,408, the amount of the second mold deposit, $12,400, as well as the legal fees paid by Source 1 for Source 2's defense.

In the alternative, the Plaintiffs have proven, by clear and convincing evidence, that as a result of the barrage of self-dealing and misconduct in which Hodge engaged for the benefit of Source 2 during Source 1's dissolution, Source 2 holds Source 1's assets in a judicially enforceable constructive trust imposed for Source 1's benefit. Hodge and Source 2's malicious and illegal conduct included, without limitation, the anti-competitive auction, the misappropriated purchase order, the unconscionable lease, the diversion of prepaid plastic, the diversion of the second mold, Source 1's payment of Source employees working for Source 2 while making the occasional call to follow up on the Booked Orders, and the Source 1 salary for Hodge to sell for Source 2. In other words, because the so-called "dissolution" was little more than a minority member squeeze-out, the assets of what is now known as Source 2 are the assets of Source 1, held in constructive trust for the benefit of Source 1. Source 1 must again be dissolved in accordance with Idaho law, Source 1's Operating Agreement and the requested

injunctive relief precluding Hodge's involvement, and the assets of the constructive trust (Source 2) must be liquidated for Source 1's benefit.

Prehn has also proven, by a preponderance of the evidence, Source 1's liability for his back salary and loan in the amount of $157,887, and in turn Hodge's personal liability for $131,115 in distributions wrongfully made by Hodge to Source 1 membership in violation of his duty to pay Prehn prior to such distributions.

Finally, the Plaintiffs proved, by a preponderance of the evidence, that Hodge violated his fiduciary duties to Source 1 members and breached the duty of good faith and fair dealing in the conduct of the Source 1 auction, damaging the Plaintiffs' individual business interests in the amount of $236,376 for lost shaker cup sales.

DATED this 23 day of December, 2013.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23 day of December, 2013, I caused a true and correct copy of the foregoing **PLAINTIFFS' CLOSING ARGUMENT** to be served by the method indicated below, and addressed to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' REBUTTAL CLOSING ARGUMENT

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), and hereby submit their written rebuttal closing argument:

I. REBUTTAL ARGUMENT

A. Diversion of Source 1's Funds and Unjust Enrichment

Prehn insinuates that Hodge and Mike Brown guaranteed that all the remaining P.O.s could have been fully processed and billed within approximately two months for between $60,000 to $80,000 in overhead cost. Prehn argues that based on his experience and review of the booked orders, Source 1 could have finished processing them at a total cost of between $20,000 to

$30,000. Yet, Prehn admitted and acknowledged that Source 1 did not complete its final P.O. reflected in the Order dated May 17, 2012 until September. Prehn presented no evidence that the delay in processing the existing P.O.s was intentional and intended to deprive a maximum return for all of the members. Despite acknowledging the facts of what transpired with the existing P.O.s, Prehn asserts that Hodge, personally, should be held responsible for not completing the P.O.s within a two month period and should be held liable for any and all overhead costs and other expenses incurred so that Source 1 could have realized a net profit in excess of $200,000 similar to the one Source 1 experienced in 2011. (In 2011, Source 1 generated its largest net profit in the company's eight year history of $289,156. *See* Ps' Ex. 165. The net profit generated in 2011 covered four (4) quarters or the entire year of the company continually generating revenue as a going concern.)

In 2012, Source 1 generated revenue for only one quarter (January through March) and yet Prehn argues that based on the existing P.O.s reflected in the Order, Source 1 should have generated a net profit nearly equal to the net profit the company experienced throughout the entire 2011 calendar year. In order for Source 1 to realize such a net profit, Prehn is claiming that Hodge should have personally incurred all of the expenses and costs to process the remaining P.O.s for the benefit of Prehn and Bandak, only, since Brown and Claiborne were joining him in Source 2.

Prehn acknowledges that Mr. Butler's testimony was not unsound, but claims he failed to consider specific and unique circumstances of Source 1's business. However, that ignores the substance of Mr. Butler's testimony and opinion in that Prehn's computation of damages allegedly incurred by Source 1 reflected in Exhibits 165 and 166 was an erroneous methodology which was merely an exercise of mathematics, but was conceptually flawed, speculative and artificially inflated. Mr. Butler testified that applying a going concern analysis to a company under liquidation was comparing apples to oranges. Mr. Butler explained that any alleged

damages for unnecessary expenses or excessive delay could not be ascertained based on a reasonable degree of certainty from Prehn's calculations. He explained on cross examination that the proper way to determine whether the company suffered any damages would have been to identify each expense and show how it was allegedly excessive and/or unreasonable which a margin analysis could not show.

Prehn claims that Mr. Butler failed to consider that Source 2 was essentially Source 1 and carrying on the same business as a going concern. This argument is illogical. Prehn admitted that he intended to remain in the industry and knew Hodge was starting up a new company to compete in the same industry. The Order releasing Prehn and Hodge from their non-compete agreements with Source 1 clearly contemplated this fact. Prehn represented that he was the "most qualified person" to assist BB.com's business and had a staff ready to handle its purchasing needs. *See* Ds' Ex. 1065. The only difference between them is Hodge continued forward with Source 2 while Prehn appears to have given up starting a new company based on BB.com's rejections of his proposals.

Clearly, the parties would have continued to operate their respective new companies in the same or similar fashion as how Source 1 operated. Prehn's unsuccessful attempt to start a new company in the same industry in no way evidences somehow Hodge should be liable for his failure. It was obvious why the members elected to have Prehn, rather than Hodge, step down as a working member in 2011 because they all knew that Prehn was not capable of running and managing Source 1 as efficiently or effectively as Hodge. Prehn's hurt feelings and ego do not amount to disabling conduct on the part of Hodge.

Finally, Jesse Arp's alleged statement to Prehn of Hodge's alleged intent to "bleed the company dry" is simply not credible. Prehn testified that he and Jesse were good friends and spoke on a weekly basis throughout 2011 and 2012. He testified that Jesse wanted to protect them, but would not testify against Hodge for fear of retaliation despite living in North Carolina.

Yet, Prehn's friendship with Jesse required Prehn to incur the expense of obtaining an out of state subpoena to depose him which Prehn later vacated. Prehn failed to present any documentary evidence corroborating Jesse's alleged statements, nor that Jesse was not able to testify at the trial which was scheduled on two separate occasions. Despite being such good friends, Prehn did not hire or attempt to hire Jesse to work for his new company. Clearly, Prehn's testimony concerning Jesse's alleged representations are wholly hearsay, self-serving and biased. The failure to produce and present Jesse's alleged testimony as the alleged "whistleblower" of Source 1 is a clear indication that the alleged Jesse's representations are suspect.

Notwithstanding, Prehn failed to produce any evidence of any alleged expenses that Jesse expressed to him that he thought were unreasonable, unrelated or excessive in the dissolution and wind up of Source 1's affairs. Prehn carried the burden and failed to prove these alleged damages and diversion of funds based on a reasonable degree of certainty and therefore should be given no weight and disregarded.

B. Hodge's Compensation as Liquidator

Prehn implies that Hodge was merely Source 1's salesman and had no other role in the company. Yet, Prehn testified that prior to stepping down as a working member, he and Hodge managed the company as equal partners. The evidence in the record clearly shows that Hodge was the sole manager with the exclusive "authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business." *See* Ds' Ex. 1003 (p. 7-8, §§ 6.1 & 6.2). Prehn ignores the fact that what led to the confrontation between he and Hodge in 2010 at the office was Hodge reviewing and overseeing Prehn's work product with the Company which Prehn felt disrespected and insulted. It was the members, including Prehn, who felt it was in the best interest of the company for him to step down.

In 2011, without Prehn's involvement, Hodge was still the sole manager and supervised the entire operations of Source 1 which resulted in its largest profit. Prehn implies that Source 1 operated on its own with little involvement from Hodge. According to Prehn, P.O.s simply process themselves and little work or effort is required from the staff of eight or so full-time workers. If operating a company similar to Source 1 is so easy, why has Prehn failed to compete in the industry.

Prehn argues that since no sales were being made during the dissolution process, Hodge simply presided as a figurehead over the dissolution process and therefore, any compensation should have been minimal, if any. Prehn ignores that it was Hodge who was overseeing the entire process, including managing and handling the litigation which Prehn initiated. Prehn failed to offer evidence as to what and how reasonable compensation should be determined for the liquidator. Likewise, PRehn ignores the fact that Hodge reduced his salary from 12,000 per month leading up to the dissolution to $10,000 a month after the dissolution.

In addition, Prehn's alleged damages suffered by Source 1 constitute a double recovery. According to exhibits 165 and 166, Hodge's compensation is already considered in the net loss which Prehn seeks recovery and now again, Prehn seeks recovery for the same expense already contemplated in the net loss as a separate damage item.

C. Prepaid Plastic Deposit

As previously explained, Hodge did not discover nor was aware of the remaining balance of the prepaid plastic deposit until after his deposition was taken at which he agreed that the remaining balance should be paid back to Source 1. However, at the same time, Hodge presented evidence showing that Source 2 financially assisted and continues to assist Source 1 in winding up its affairs in excess of $60,000 plus Source 2 covered fixed and variable expenses, except for salary of 2 employees, from August 2012 to present. These amounts should be offset against the prepaid plastic deposit and other damages, if any, found by the Court.

D. Second Mold Deposit

As previously explained, Prehn's assertion that the second mold was never disclosed to him is without merit. Not only was the second mold disclosed to them at the board meeting in March, 2012, but Source 1's March balance sheet which Prehn received before the lawsuit reflected the acquisition of the second mold. *See* Ds' Ex. 1009 (March, 2012 Balance Sheet).[1] In addition, Prehn had actual knowledge of the second mold through Ed Butkevich which he intentionally omitted to seek clarification of which asset lot it applied to in the auction despite admitting to creating a duty under the Order.

Notwithstanding, the contract for the second mold was an intangible asset of Source 1 which was defined in the asset lot description for intellectual property which the evidence clearly showed that Hodge was the highest bidder for the intellectual property and tendered his bid amount to the Company per the auction instructions. Neither Hodge nor Source 2 were unjustly enriched at the expense of Source 1 as Source 1 was compensated for the asset at the auction to the extent of $44,200, $39,100 more than what Prehn thought the intellectual property of Source 1 was worth ($5,100).

The evidence in the record showed that Prehn acted with unclean hands and should be denied any relief on the subject matter for his dishonesty.

E. Loan to Hodge

Prehn's argument concerning Hodge's loan from Source 1 is circular and confusing. The evidence showed Hodge owed the Company a debt of just over $20,000. The Company owed a debt to Syringa Bank for a truck loan of just over $19,000. Syringa Bank held legal title to the truck while Source 1 held equitable title. The truck was valued at around $20,000. Hodge agreed

[1] Under G/L # 166 entitled shaker moulds the previous YTD (year to date) balance was $43,440.00 and the YTD balance in March was $74,400.00 a difference of $31,000 the contract price for the second mold ($12,400 plus $18,600 remaining balance).

to assume Source 1's debt with Syringa Bank plus payment of $300 in exchange for forgiveness of his loan.

The exchange of one another's debt is valuable and legal consideration for an agreement. Prehn argues that Hodge received approximately $40,000 in value (the truck and forgiveness of his loan) while only assuming a $20,000 liability (the truck loan). Prehn fails to acknowledge that Hodge does not have legal title to the truck, but only equitable title assuming payments are continued to be made. If payments are not made, Syringa Bank could repossess the truck. Also, the value of the truck is a diminishing asset rather than increasing asset over time. Prehn presented no evidence that he would have paid $20,000 for the truck or that anyone would have paid that amount or any other amount for the truck.

By taking over the Source 1's debt, Source 1 not only did not make monthly payments it would have been legally obligated to make during the dissolution, but did not have to pay any other expenses associated with the truck such as insurance, maintenance, gas, repairs or interest. The loan followed the truck.

In addition to assuming Source 1's debt to Syringa Bank, Hodge reduced his compensation from $12,000 per month to $10,000 per month commencing in April which Prehn completely ignores. The evidence showed the reduction in salary was specific and directly related to this issue which reduction saved Source 1 an additional $27,000 in debt. Prehn has failed to prove that Hodge's loan to Source 1 was an unpaid debt which Hodge continues to owe to Source 1.

F. Improperly Paid Legal Fees

Of the original 19 causes of actions asserted by Prehn, 13 were against Hodge, personally, according to Plaintiffs' prayer for relief. *See* Second Amended Complaint. At trial, 9 of the causes of action were dismissed with prejudice and Prehn pursued the remaining 10, all but 1 (unjust enrichment claim) were against Hodge, personally. Prehn failed to show what amount, if

any, Source 1 paid towards Source 2's legal expenses. This entire case was Prehn's use of the judicial system as his means to personally attack Hodge for business decisions and mistakes he made prior to and after the unanimous vote to dissolve the company, as well as, after entering into a binding agreement memorialized by the Court's Order.

From April 4, 2012 when the members unanimously voted to dissolve Source 1 until April 27, 2012 when the lawsuit was filed, 23 days passed. Hodge had no incentive to delay the processing of the P.O.s or inflate expenses as Hodge simply wanted out of the partnership with Prehn. Hodge clearly informed all the members, including Plaintiffs' counsel, that he did not agree with processing the open orders because he believed the cost of overhead and cost of goods would leave the members in the negative. *See* Ps' Ex. 163. Hodge was in the best position to understand the financial issues that accompanied the continuation of processing the orders as the company's CEO, manager and liquidator. Notwithstanding, Prehn, who was not involved in the Company's operations for nearly 2 years, demanded that Hodge process the existing P.O.s for the first quarter which Hodge complied with his demand. Prehn attempted to portray himself as the inside guy or the "brains" of the operation, but yet, the evidence clearly showed Prehn was neither. Prehn did not have an understanding with how Source 1 operated since his departure which was apparent from his testimony concerning Source 1's relationship with BB.com.

The lawsuit was Prehn's way to force Source 1 to incur needless expense which ultimately resulted in the exhaustion of the company's funds. Prehn filed the motion for permanent injunction and sought an agreement so all members had a clear understanding of the scope of how the dissolution and wind up would take place. *See* Ps' Ex. 163. At the hearing where the parties reached an agreement, Prehn did not inquire about Hodge's compensation as liquidator, did not seek the BB.com P.O. to be processed despite having knowledge of it, did not request return of the profit distributions made, nor inquired about how the company and other members would be defending this case because at all times, Prehn knew the answers. Only after the fact does Prehn

now complain despite being fully knowledgeable with the terms and conditions in the operating agreement and having his own independent counsel representing him well in advance to the lawsuit being filed.

Prehn initiated this lawsuit despite being fully apprised of Hodge's actions and intent to have Mr. Baldner and Mr. Stuart, the company's counsel and CPA, involved throughout the process. Prehn did not agree with the opinions of these professionals, thus he sought his own counsel to stall Hodge's attempt to start a new company. As Prehn testified and the telephone conference with Mr. Baldner reflects, it was adamantly clear that his primary concern was Hodge having a head start in starting a new company and moving forward in the industry. Thereafter, Prehn quickly realized that Hodge possessed the customer relationships and trust regardless of Prehn's involvement in forming Source 1. Hodge was the face which the customers associated Source 1 with. Prehn and Bandak acknowledged this fact in their testimony, as well as in their closing argument.

Prehn states: "[T]he testimony of Hodge, Brown and Prehn all reinforced that Hodge had been Source 1's salesman – **its only true salesman**." *See* Plaintiffs' Closing Argument, p. 8. Prehn testified that he knew Source 1's customer base. This is true because prior to the lawsuit, Hodge provided Prehn a complete list of all of Source 1's customers. *See* Ds' Ex. 2011 (p. p. 4, ¶ 5) ("The parties acknowledge and agree that Defendant Hodge has already provided to all parties a number of business records for the first quarter of 2012, including but not limited to Customer Lists, Existing Purchase Orders for domestic and international projects, Inventory List of Company Assets, and other business records."). Prehn had no relationship with Source 1's customers other than a general acquaintance which was clearly evident by BB.com's rejections of his proposals despite representing to them that he could save them approximately $800,000 annually by working with him. Prehn sought and went after Source 1's largest customer and failed to attract its business. Prehn made no further attempt to attract new business.

The lawsuit was merely a cover for poor business decisions made by Prehn and his inability to compete in the industry, forcing Hodge and Source 1 to expend funds to defend an action based on emotion rather than merit.

G. Lost Proceeds Due to Rigged Auction

Prehn's argument concerning the auction is nonsensical and completely ignores the fact that he and Bandak at all times during the auction process were represented by their own counsel representing their best interest in the matter. Prehn misstates how auction lot 4 for intellectual property was defined. It read, in pertinent part: "This will consist of all goodwill in the company as well as all nontangible property of The Source Store, LLC." (Emphasis added).

Likewise, Prehn misstates the evidence regarding the molds. Prehn testified that immediately after the auction, he felt something was wrong so he directed his counsel **after** the assets were awarded to contact Hodge's counsel to obtain confirmation from Hodge that no liability or claim could be asserted by him. Hodge testified that he directed his counsel to respond to the email and that the purpose of his response was not to prohibit Prehn from the use of the molds but to protect his intellectual property that he just acquired. It was implied that an agreement could have been reached between Prehn and Hodge concerning the use of the molds and intellectual property which Hodge agreed, but there was no evidence of any proposal made by Prehn which Hodge refused rendering his use of the molds entirely worthless. Instead, Prehn elected not to tender the funds to Source 1 and use the proceeds for this litigation.

Prehn omits an important fact concerning the auction and Source 1's assets, he voluntarily dismissed with prejudice all his causes of action associated with the same. Immediately after the auction, Prehn could have filed with the Court a motion to determine the extent of the intellectual property associated with the molds or in the alternative to hold the auction invalid and conducted again. This would have been the most prudent manner to proceed in light of his testimony and current argument that the shaker cup business was the most important and cornerstone of his

promotional products company. Prehn's lack of action to mitigate his alleged damages, if any, is illustrative of his lack of intent to start a new company.

H. Prehn's Back Salary and Loans

Prehn argues that Hodge and Source 1 are liable to him for his back salary and loans. Prehn's argument for why Hodge is liable is because Hodge allegedly made final distributions of net profits generated in 2011 over Prehn's objection despite all the members authorizing, ratifying and cashing their respective distribution. *See* Idaho Code § 30-6-409(6) (All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.). (Emphasis added).

Prehn ignores the evidence wherein he admitted that all the members knowingly accepted what he deems to be improper distributions which would render them individually liable, if the distribution was in fact improperly distributed. *See* Idaho Code § 30-6-406(3). Likewise, Prehn makes no mention of the parties' binding agreement reflected in the Order dated May 17, 2012 wherein the remaining balance of the 2011 profits could have been distributed to the members, but no other distributions could be made illustrating that no final distribution was contemplated from the 2011 profit distributions.

Likewise, Prehn relies on Jesse Arp's computation of the balance of his loans which he admitted that he did not agree with Jesse's calculations. Despite not agreeing with Jesse's calculation of the balance of his loans, Prehn could not explain what and how he arrived at the remaining balance of his loan amount. Prehn testified that he managed and oversaw the company's bookkeeping department and ProfitMaker for nearly five years, but was not sure whether his loans were implemented on the company's only financial software program. Furthermore, Hodge testified that Janae Young did discover Prehn's loan balance in ProfitMaker and based on her audit, Prehn's loan was paid back in full to him. Prehn admitted that the amount

he alleges that is due and owing only reflects accrued interest further corroborating that all of the principal amount paid to Source 1 was paid back and reimbursed to Prehn.

Prehn testified that he was an expert in Source 1's operations and he was the inside guy. He represented that he was very detailed, but it is remarkable he could not explain how much in total he advanced to the company and likewise how much the company repaid him back for his advances. His spreadsheet did not illustrate each and every advance he made to the company or each and every payment he received from the company. He testified that he applied a net calculation each month which no one could confirm. Clearly, Prehn had an incentive to make sure no one could understand and track his spreadsheet which he created, but he did not realize that his loan balance was tracked under ProfitMaker which Hodge testified showed the balance was paid off. If any balance remained toward his loans, the debt was owed by Source 1, not Hodge personally.

Likewise, Prehn's alleged back salary was not in writing. Prehn did not explain the material terms of this alleged agreement including when it was created. Prehn testified that he thought some of the payments made by Source 1 between 2003 and 2005 may have been paid towards his salary in direct conflict with his prior testimony that he did not receive any salary from 2002 through 2005. Prehn's inconsistent statements evidenced his uncertainty of what were the terms of these alleged agreements, when they were made and what amounts if any were still due and owing.

Prehn carried the burden to show the material terms of these alleged agreements and to prove based on a reasonable degree of certainty the alleged amounts owing on them. Prehn failed to meet his burden, now relying on an excel sheet created by Jesse Arp for which he testified he did not agree to in the first place.

I. Plaintiffs' Lost Profits on Shaker Cup Sales

Prehn's lost profits analysis for a nine month period is based on Hodge and Source 2's ability to compete in the shaker cup business and place a new set of molds in the United States, despite admitting and acknowledging that prior to acquiring the Patriot Shaker Cup molds, Source 1 produced and sold shaker cups through China. Brown testified that even if Source 2 did not acquire the subject molds, it would have continued in the shaker cup business by outsourcing sales through China.

As noted above, Prehn assumes or speculates that he would have retained all of Source 1's former customers' business during this downtime by Source 2 which clearly is an erroneous assumption. Prehn testified that cups produced by Source 1 were not that unique, but somehow he had a significant market advantage.

In *Clark v. International Harvester Co.,* 99 Idaho 326, 346-47, 581 P.2d 784 (1978), the Idaho Supreme Court explained the measure of lost profits as follows:

> Although prospective profits hoped to be derived from a business which is not yet established but merely in contemplation are ordinarily too speculative to be recoverable, a plaintiff is not categorically denied the right to recover lost profits simply because he is engaged in a relatively new business. (Citation omitted). The pivotal question is not whether the plaintiff has proven an established earning record **but whether he has proven the damages of lost profits with reasonable certainty, although the former is often relevant to the latter.** (Emphasis added).

In *Trilogy Networks Systems, Inc. v. Johnson,* 144 Idaho 844, 172 P.3d 1119 (2007), the Idaho Supreme Court expressed the measure of lost profits is based on plaintiff's loss by reason of the breach, not the amount of profits made by defendant.

Here, Prehn's calculation of lost profits is premised on Source 2's ability to compete and generate its own profit. Based on Prehn's assumption that he would have retained the same revenue generated in the first quarter throughout the 9 month period is erroneous for several reasons: 1) Prehn admits Hodge was the true and only salesman for the company, 2) Brown testified that after the auction, the shaker cup business generated by Source 2 for the remaining 3

quarters of 2012 was less than Source 1's production in 2011, 3) Brown testified the subject molds were in need of constant repairs and 4) the relationship with Technology Plastics was deteriorating and causing a loss of business with customers. Facts which Prehn does not consider or contemplate in his calculation for lost profits. Furthermore, Prehn was fully aware of these facts prior to creating his exhibit 167 (disclosed 5 days before the scheduled trial on April 1, 2013) and this trial. Prehn knew that Source 1 did not complete its last shaker cup order until September, an order that should have been completed in May but for the problems Source 1 was experiencing at Technology Plastics. The same manufacturer Prehn relies on his calculation for lost profits.

Prehn's calculation of lost profits is premised on his theory that Hodge held an unconscionable auction which they had an opportunity and duty to cooperate and participate in. Prior to and through the auction process, Prehn had independent and competent counsel representing their best interest. Despite having representation, Prehn made no attempts to clarify or modify the instructions despite his confusion and alleged complexity of the auction process. Furthermore, despite being awarded the subject molds, Prehn elected not to tender his bid amounts to Source 1, but instead to his counsel.

Under the law, Prehn has failed to prove a breach of the parties' agreement concerning the auction and failed to prove based on reasonable certainty that he and Bandak suffered any lost profits. Exhibit 167 is based on speculation and erroneous assumptions evidenced in the record.

II. Hodge's Alleged Bad Acts and Disabling Conduct

Prehn argues that certain actions by Hodge are indicative of bad acts and disabling conduct. He cites Hodge's purchasing of the commercial building where Source 1 conducted business prior to his ownership as one such bad act and disabling conduct. Prehn initially testified that Hodge never disclosed that he intended to purchase the building at all to the members. Later, on cross examination, he testified that Jesse Arp allegedly warned him that purpose for Hodge

wanting Prehn to sign the credit line renewal in September 2012 was so that Hodge could qualify for the loan to purchase the building. The evidence showed that Prehn never executed the credit line renewal, but yet Hodge still was able to obtain the loan that Jesse allegedly warned Prehn his signature was needed. Furthermore, Jesse's alleged warning was made in 2011 when the credit line renewal was requested, at minimum four (4) months before Hodge closed on the property, meaning Prehn had actual knowledge of Hodge's intentions to purchase the building well in advance of the members' voting to dissolve the company. As for Prehn's allegations of the rent paid under the lease, he omitted that the lease was a true triple net lease obligating Source 1 to pay more than just a base rent.

Prehn attempts to compare this case to a squeeze out case alleging Hodge received an exorbitant salary, paid high rental payments to himself and paid unreasonable payments to Source 2 employees doing Source 1's work as mandated by the Order. Prehn's comparison of the *McCann* case to the instant case fails on a number of fronts. First, Hodge's salary was voted on and agreed in accordance with the company's operating agreement. Simply because Prehn disagreed with his proposed salary does not arise to a level of a squeeze out. Second, the rent charged to Source 1 for four (4) months which was and is the exact same rent charged to Source 2 thereafter was based on professional advice of the fair market rental value of the building in the area. **Prehn produced no evidence of what the fair market rental value was in the area**. Finally, Prehn contends Source 1 paid wages and salaries to Source 2 employees completely ignoring the fact that it was Prehn's demand that Hodge process the existing P.O.s reflected in the Order. Again, Prehn somehow believes that the P.O.s could process themselves and Hodge should have assumed the liability and expense, personally, for processing those P.O.s. Prehn omits that Hodge informed him shortly after the hearing on May 8, 2012 of which employees would be retained and necessary to complete the existing P.O.s reflected in the Order. *See* Ds'

Ex. 2011 (p. 3-4, ¶ 4). Not only did Prehn know who was going to work on the existing P.O.s, he never objected to them until now.

Another example cited by Prehn is Hodge's alleged violation of his non-compete agreement with Source 1. As previously explained, Prehn failed to offer evidence proving that Hodge infringed on Source 1's legitimate business interests when and after it dissolved. The evidence showed that Source 1's existing P.O.s were not diverted from it and that based on opinion of the company's counsel, no new P.O.s should be taken after the members voted to dissolve which in this case was April 4, 2012. Based on the evidence, Prehn's complaint about the BB.com stems from his inability to get the P.O., rather than any alleged damaged suffered by Source 1.

Prehn cites the transfer of the ProfitMaker as evidence of disabling conduct. At the auction, Prehn was awarded the office inventory which included the ProfitMaker. Despite there being no issue regarding his award of the office inventory, Prehn elected not tender his bid for this asset lot. Brown testified that ASI, the company carrying the license, provided Source 2 a mirror image of ProfitMaker. Source 1 continued to possess ProfitMaker during the lawsuit. Brown testified the actual license was not transferred to Source 2 until June of 2012. Despite claiming the ProfitMaker program was invaluable to start his company, Prehn approached BB.com and informed them he had a staff ready and was fully prepared to process its orders. *See* Ds' Ex. 1065. He was apparently able to handle BB.com's orders without the need of ProfitMaker, even though it was crucial to his business. The instructions clearly explained that failure to tender one's bid to Source 1 forfeited the award. The evidence showed that Hodge tendered his bid for the office inventory to Source 2 so Prehn's assertion that Source 1 was never compensated for the asset is without merit. *See,* Ds' Exs. 1007 (May statement, payment of $46,200 on May 23, 2012) and 1062.

Finally, Prehn alleges that Hodge treated Source 1's money as Source 2's slush fund. As previously discussed, the testimony and credibility between Jade Welch and Janae Young warrant no further discussion.

III. CONCLUSION

Prehn's case is predicated on smoke screens and mirrors with a lack of substance and merit. The lawsuit was a mere attempt to re-do poor, but voluntary business decisions, made by Prehn. The only real allegation Prehn asserts is that he could have done a better job than Hodge in the dissolution process. Prehn was unwilling to step up to the challenge when he was presented the opportunity at the hearing.

Based on the evidence and testimony, Prehn failed to prove and meet his burden by a preponderance of the evidence, reasonable certainty or by clear and convincing evidence that Hodge's actions violated the theories prosecuted in this matter. Furthermore, Prehn failed to prove and meet his burden based on a reasonable degree of certainty of Source 1's, his and Bandak's damages allegedly incurred in this case.

Accordingly, Hodge, Source 1 and Source 2 respectfully request this Court enter Judgment in their favor and dismiss Plaintiffs' complaint and causes of actions presented herein.

DATED this 3rd day of January, 2014.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of January, 2014, a true and correct copy of the foregoing was served upon the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **PLAINTIFFS' CLOSING RESPONSE**

I. INTRODUCTION

Defendants' Closing Argument fails to articulate how the evidence provides Hodge a defense for his misconduct while winding up the affairs of Source 1. Hodge's theme—that the Plaintiffs are bitter over their supposed inability to compete on a level playing field with Hodge—does not match the facts. Not only was Hodge receiving a lavish salary and operating his mirror-image company in Source 1's footprint during the lengthy dissolution, Hodge would

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not have received much, if any, of the proceeds of any distribution after the vote to dissolve, supplying additional motive for him to bleed the company during dissolution.

Source 1 owed Prehn his loan and back salary, and Bandak and Claiborne had large positive balances in their respective capital accounts, which capital accounts dictated distributions to members after a vote to dissolve. (*Exh. 1, Operating Agreement at 23, § 14.2(i); Exh. 1009, March 2012 Balance Sheet, Stockholder's Equity.*) In light of what transpired, it is not a coincidence that the two Source 1 members (Hodge and Brown) operating Source 2 and winding up Source 1 were the same two members that stood to benefit the least from an effective and efficient dissolution. (*Exh. 171, April 11, 2012 E-mail from Baldner to Hodge: "**If we dissolve before anyone else gets anything, everyone gets back their original contributions. We don't want this.**"*) Hodge's realization in this regard, after consulting with counsel, prompted his flagrant abuse of his status as liquidator against the interests of the membership, and for his own personal benefit, as well as for the benefit of Source 2.

II. ARGUMENT

A. The Missing Profits

In response to evidence presented at trial that Hodge misappropriated Source 1 resources and purposefully inflated overhead for the benefit of Source 2 when processing the Booked Orders, the Defendants offer only the vague and unspecific comparison between a going concern and a dissolving entity suggested by their expert Peter Butler. (*Def. Closing at 11-14.*) Butler, however, was not aware that Hodge and Brown estimated that it would take $60,000 to $80,000 and perhaps a little more than two months, "***if that***," to process the Booked Orders. Butler had no concept of what "fixed and variable expenses" were actually required to process those Booked Orders. Furthermore, Butler did not contemplate the fact that, in reality, Source 1 was operating alongside Source 2, a mirror-image company, as a "going concern." Hodge, as

manager of Source 1 and Source 2, not only ***could have*** achieved the efficiencies of a "going concern" when processing the Booked Orders with employees engaged primarily in Source 2 business, working with Source 2 customers, in a Source 2 office under Source 2 management, but he had a ***fiduciary duty*** to achieve such efficiencies when processing the Booked Orders for the benefit of Source 1.

Hodge owed Source 1 fiduciary duties as liquidator. Prehn's testimony that a liquidator seeking to minimize expenses could have processed the Booked Orders with minimal oversight, a computer, a telephone, and an employee or two was unrebutted. Comparing such testimony to the manner in which Hodge actually conducted Source 1's dissolution shows that Hodge violated his fiduciary duties for the benefit of Source 2. That Hodge deliberately placed himself in an inherently conflicted position as a member/manager of Source 2 does not absolve him of his fiduciary duties to Source 1.[1] Indeed, Hodge's conflicted position is the very genesis of this lawsuit. The unique, specific and highly relevant facts that Butler did not consider are the very facts that make the Plaintiffs' margin analysis appropriate in this case.

The Defendants also assert that the Plaintiffs "did not produce any credible evidence of any specific overhead expenses that were inflated, unreasonable, excessive or not

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[1] Ordinarily, an unconflicted liquidator would certainly explore the negotiation of a contract with former Source 1 employees and/or Source 2 to process the Booked Orders ***if such a contract provided the most effective and efficient means to wind up the business***. Such a liquidator would certainly ***not*** agree to pay nearly $25,000 in inflated lease payments for an unnecessarily expensive office (especially when there is no dispute that Source 1 had no long-term lease obligation upon dissolution), in addition to other unnecessary operational overhead when all that was required was access to customer and supplier records and the appropriate means of communicating with such customers and suppliers. Nor would such a liquidator agree to pay a sales professional over $100,000 when no sales were necessary during the dissolution. A competent liquidator would not agree to pay full-time salaries to the most well-paid Source employees that were working only part-time on Source 1 business. Hodge's conflict and intent were clear at the outset, causing the Plaintiffs' concerns, and ultimately, the lawsuit. His actions thereafter, even when under and contrary to Court order, revealed that such concerns were well-founded, and the damaging effects of Hodge's conduct were demonstrated at trial.

related in any way to the dissolution process of Source 1." (*Def. Closing at 14.*) To the contrary, the evidence showed that Hodge collected more than $100,000 in salary from Source 1 over the course of the 10-month dissolution, notwithstanding the fact that (a) Source 1 was not selling any products; (b) minimal overhead was required to process the Booked Orders; and (c) Hodge devoted his time to developing Source 2 business during such time period.

The evidence showed that Hodge doubled Source 1's rent immediately, ultimately charging Source 1 $24,701.76 in rent after he purchased the property in April, 2012,[2] to office wind-up operations that required one or two employees to make a couple of calls per day to follow up on the Booked Orders. It also showed that, without selling, Source 1 incurred more than $20,000 in "selling expenses." Source 1 paid for travel to China to check on the status of the second mold, which benefitted Source 2, not Source 1. The evidence demonstrated that Source 1 paid full salaries to expensive employees such as Brown and Bews for far too long after the dissolution, even though their efforts to process the Booked Orders constituted only a very small fraction of their workload. Source 1 also paid for unnecessary items such as magazine subscriptions after the dissolution.

The foregoing are just examples of the evidence presented at trial. The Plaintiffs produced ample evidence of inflated, unreasonable, and excessive "specific overhead expenses" incurred or sanctioned by Hodge in the name of Source 1, and in dereliction of his fiduciary duties. If there was a way that Hodge could benefit himself or Source 2 by expensing something to Source 1, he did it. The margin analysis and comparison between actual and estimated costs reinforce such "specific" evidence, and are consistent with Hodge and Brown's statement at the

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[2] Hodge's testimony concerning a person named Lyle Cook's opinion of fair market rental value, recited in the Defendants' Closing Argument at 13, lacked foundation and was hearsay. Even if the objection had not been sustained, the evidence is not probative without foundation for such person's value opinion.

April 13, 2012 dissolution meeting as to the minimal effort and cost that would be needed to process the Booked Orders. Hodge offered no defense for spending more than $300,000 in overhead to process the Booked Orders.[3] The Plaintiffs proved by a preponderance of evidence that there was no less than $212,616 in missing profits as a result of Hodge's misconduct.

B. Hodge's Six-Figure Salary During Dissolution

With respect to Hodge's $103,386 salesman's salary during dissolution, the Defendants deflect from Hodge's blatant money grab by making irrelevant points about the fact that the Operating Agreement provides that the manager's salary shall be fixed from time to time per the majority vote and that it does not require a yearly vote. (*Def. Closing at 12.*) Such issues were never in dispute. Critically, however, during liquidation, not only were expenses to be minimized, but the Operating Agreement clearly provides that a member of Source 1 such as Hodge was "entitled to receive ***reasonable compensation for services performed***." (*Exh. 1 at 22, ¶ 14.2.*) Hodge presented no evidence of ***services performed***, beyond consulting an attorney about the dissolution process, and again about the auction, which "services" were demonstrably for his own personal benefit. (*Exh. 171, April 11, 2012 E-mail from Baldner to Hodge: "**If we dissolve before anyone else gets anything, everyone gets back their original contributions. We don't want this.**"*)

Hodge certainly was not selling for Source 1; all witnesses at trial agreed that no selling was required. Hodge was also not ensuring compliance with the Court's order regarding dissolution. In fact, his flimsy defense to the improper loan from Source 1 to Source 2 and the myriad other problems with Source 1's books and records is to blame bookkeeping "mistakes" on the former bookkeeper, Jade Welch, which "mistakes" were not even discovered by Hodge.

[3] It bears repeating that the extraordinary legal, accounting, and IT costs associated with the litigation and wind-up are ***not*** included in the $300,000 figure.

Put simply, during the 10-month dissolution, Source 1's bookkeeper handled the books, Brown and Bews spent a portion of their time processing the Booked Orders, and Hodge set up Source 2 and developed more than $1 million in sales. And for that, Source 2 paid Hodge a mere $10,000.

Hodge asks the Court to accept that, notwithstanding his position at Source 2, he had nothing to do with the efficiencies enjoyed by Source 2 that corresponded directly with the inefficiencies of Source 1. That Booked Orders originating in late 2011, January and February of 2012 (which ordinarily had a ***maximum*** booked-to-billed processing time of 90-120 days) did not get billed until September 2012 was apparently just a run of bad luck. Not only did Hodge never actually perform services ***for Source 1*** in exchange for his $103,386 salary, that completely unreasonable salary did not even provide Source 1 membership with a measure of accountability. The Plaintiffs have proven, by a preponderance of the evidence, a breach of fiduciary duty warranting a judgment in favor of Source 1 against Hodge in the amount his salary of $103,386.

C. Hodge's Loan "Repayment."

The farce does not stop with Hodge's absurd suggestion that he was entitled to a six-figure salary for the purposefully delayed, expensive and unconscionable dissolution of Source 1. Hodge's argument pushes beyond that contention, and asserts that Hodge was *actually* entitled to $12,000 per month in accordance with the Source 1 salesman's salary he had received when Source 1 was a fully operational sales and brokerage business. (*Def. Closing at 12-13.*) According to Hodge, he accepted $10,000 per month from Source 1 instead of $12,000, which $2,000 monthly deficit repaid or offset the $20,085 loan from Source 1.[4] Hodge's theory in this

[4] Based on his argument in closing, it still appears lost on Hodge and/or his counsel that when he "assum[ed] Source 1's debt to Syringa bank" (*Def. Closing at 13*), he also received a Source 1 asset of approximately equivalent value. *See Plaintiffs' Closing Argument at 12-13* for the complete discussion.

connection deserves little discussion. Hodge was not entitled to $10,000 per month for his alleged "services" as Source 1's liquidator, and he certainly was not entitled to $12,000. Hodge still owes Source 1 $20,085, the balance of the loan he received because the Plaintiffs presented compelling evidence that such debt existed as of the date of dissolution, and the Defendants presented no credible evidence of repayment.

D. The Prepaid Plastic/Second Mold Offset.

The Defendants admit that the pre-paid plastic amount should have been reimbursed to Source 1. They contend, however, that Source 2 is entitled to an offset of the entire balance, based solely on a nakedly self-serving allocation of expenses that Source 2 purportedly paid on behalf of Source 1. (*Def. Closing at 20.*) Additionally, while the Defendants challenge whether the second mold deposit of $12,400 should have been reimbursed to Source 1, they suggest that even if Plaintiffs met their burden, the same offset should also apply equally to eliminate any judgment in such amount. (*Def. Closing at 22.*)

The missing Source 1 profits and the means by which Hodge inflated costs and delayed the dissolution to benefit Source 2 are addressed in detail in Section II.A, and even a cursory review of the allocations in Exhibit 1013 reveals that such exhibit is without merit. For example, the Defendants allocated 50% of Brown's Source 2 salary to Source 1 through January 2013, notwithstanding the undisputed fact that the last of the Booked Orders was completed in September 2012, and also failing to account for Brown's testimony that he only spent a fraction of his time after April 2012 working on such Booked Orders. The Defendants also allocated to Source 1 50% of Source 2's overhead, including the lease payment (which Source 2 did not begin paying until August). Such allocations are nothing more than Hodge's contrivances, without basis in the business records, journal entries or other evidence presented at trial. Source

2 owes Source 1 $18,408 for the pre-paid plastic credit, and $12,400 for the second mold deposit, and is not entitled to an offset.

E. The Second Mold as Intellectual Property.

Among the most creative arguments proposed by the Defendants in this case is the theory that the undisclosed second mold was intangible intellectual property purchased by Hodge at the auction. (*Def. Closing at 20-22.*) As the Defendants acknowledge, and for unexplained reasons, ***after*** the vote to dissolve and ***before*** the auction, Source 1 paid the travel expenses and salary of Bews and the travel expenses of a representative of Technology Plastics to travel to China to inspect the mold, which ***mold had been produced and existed in a "physical and tangible" form.*** (*Id.*) According to Hodge, however, because the undisclosed physical mold was "not a physical and tangible asset ***located in the United States***," it was therefore an intangible asset of Source 1. (*Def. Closing at 21.*)

First, the Defendants' reliance upon the mold's location in China, as opposed to the United States, to demonstrate the mold's intangible character is set forth without any legal support, or even a logical argument. The second mold was obviously a tangible asset, the production of which had been commissioned and monitored by Source 1, at Source 1 expense.

Second, and equally important, the second mold should have been, but was not, disclosed by Hodge as an asset to be auctioned. There is no question the mold was a tangible and physical asset of Source 1, and any and all bidders should have had the opportunity to bid on such asset. Neither the fact that the asset was in China, nor the fact that any bidder awarded the asset would need to complete payment, excuses Hodge's failure to include the second mold among the auction lots. How were any auction bidders to know that Hodge's tortured interpretation of "intellectual property" included not only the exclusive right to use the existing molds for their intended purpose, but also an undisclosed second mold existing in China?

Hodge's dubious theory that the second mold was Source 1 intellectual property that he received in the auction without disclosure of the same to any other bidders only bolsters the Plaintiffs' claim that Hodge, with operational knowledge of Source 1 and the intent to deceive the other bidders for the sole benefit of Source 2, held a purposefully confusing and unconscionable auction of Source 1 assets in violation of his duty of good faith and fair dealing, and that Source 2 thereafter received a benefit, in the amount of not less than $12,400.[5]

F. The Plaintiffs' Lost Profits.

To address the Plaintiffs' evidence of lost profits resulting from the rigged auction, Hodge argues that his new company would have simply ordered shakers from China (*Def. Closing at 23*), that Prehn suggested the molds could be produced and delivered to the U.S. within six months (*Id.* at 23), and that Prehn is just bitter over his failure to compete. (*Id.* at 19.)

First Prehn offered unrebutted testimony that Source 1 had started utilizing the domestic shaker product to tap into a market for such product based on a demonstrated demand for smaller orders on a tighter turnaround. When brokering orders for shaker cups manufactured in China, Source 1 limited its customer base to those customers making very large orders—large wholesale customers like BodyBuilding.com ("BB.com") with large warehouse capacity. The domestic shaker business was changing that, broadening the customer base and better serving customers by allowing smaller orders, faster delivery and greater quality control.

Furthermore, when asked about his June 13, 2012 proposal to BB.com wherein he represented that it would take "approximately six months to produce and deliver [the shaker molds] to the U.S." (*Exh. 1065.*), Prehn affirmed the accuracy of that statement. Prehn elaborated that, based on his previous experience accomplishing that very task, it would take six

[5] Notably, in the first two rounds of bidding at the awkward and confusing three-bid blind e-mail auction, Hodge bid only $5,000 for the intellectual property lot that purportedly included the second mold, before increasing his third and final bid to $44,200.

months to deliver the molds to the U.S. and then approximately three more months to make adjustments, test parts production and then place the molds in service at Technology Plastics before the molds were operational, and producing shaker cups for customers. Source 2's own experience with the second mold actually suggests Prehn's nine month head-start estimate in Exhibit 167 was appropriate, if not conservative. (*Def. Closing at 21.*)

Finally, what Hodge ignores as he attempts to suggest that the Plaintiffs are merely upset that their alleged lack of business acumen or poor decisions caused their inability to compete, is Hodge's blatantly anti-competitive conduct ***as liquidator of Source 1*** that made it as difficult as possible for the Plaintiffs to even create a competing promotional products company. After the vote to dissolve, Hodge refused to pay back Prehn's loans and back salary before making distributions, which would have provided critical capital for the planned venture.

On April 15, 2012, ignoring the statements made at the April 13, 2012 dissolution conference call with Mike Baldner about processing the Booked Orders, Hodge stated he would "dissolve the company in two weeks" and simply refused to process the Booked Orders because Source 1's business was allegedly "based on billed and that is what [he would] base the dissolution on." (*Exh. 37.*) Hodge asserted he was "under no obligation to continue to process purchase orders." (*Id.*) That about-face confirmed Hodge's intent to divert the Booked Orders and any future orders placed with the Source business to a new entity, by virtue of Source 1's goodwill, and Hodge's status as operational manager and salesman. In short, Hodge initially expected to simply succeed to Source 1's business without having to account to the minority membership for their investment or the assets in which they had a clear interest. Clearly, Hodge's conduct was entirely self-serving, notwithstanding his duties to the company. It was only after the Plaintiffs were forced to file suit and demand an auction of assets that Hodge agreed that the Booked Orders were a valuable asset, and that an auction should be held.

Frustrated at the Plaintiffs' unwillingness to simply stand by as Hodge usurped Source 1 resources for his own benefit, Hodge developed a new approach: simply bleed the company dry during dissolution. Hodge's unconscionable conduct related to liquidating Source 1's assets at auction was apparent at trial, is addressed in great detail in the Plaintiffs' Closing Argument at 11-12, 15-17, and 18-20, and at Section II.E *supra*, and will not be repeated at length here. In sum, Hodge sought to preclude the Plaintiffs from commencing what would be a profitable shaker cup business (undisputedly the most profitable aspect of Source 1's business) by taking the position that the molds Prehn had purchased could not be used for their intended purpose without Source intellectual property. By doing so, Hodge also sought to tie up $111,000 of Prehn's money so that he could not pursue the instant lawsuit and a fair and equitable result for the Plaintiffs. While Hodge's latter effort failed, the former did not.

By June 13, 2012, all the Plaintiffs' had left was Prehn's industry know-how, and a relationship with BB.com. The unsuccessful pitch to BB.com did not demonstrate poor business acumen or decisions. Prehn's pitch was an effort to utilize his knowledge of a business he had spent years learning to mitigate the damages caused by Hodge's auction misconduct. The Plaintiffs' inability to commence a shaker business was the result of Hodge's bad faith and post-auction threats and it eliminated a head start the unencumbered possession of a domestic shaker mold would have provided to the Plaintiffs. The head start was valuable, and Prehn's unrebutted testimony valued the lost profits at $236,376.

G. Prehn's Back Salary and Loans

In order to address Prehn's loan to Source 1 and back salary, the Defendants focus upon two very old sets of documents—checks issued by Source 1 to Prehn in 2004 and 2005 and certain pre-formation memoranda related to the company. (*Def. Closing at 5-6.*)

With respect to the checks issued by Source 1 to Prehn, Prehn offered unrebutted testimony that he kept the company afloat financially between 2003 and 2008, with numerous loans and advances. Checks reflecting Source 1's repayment of certain of these loans and advances in 2004 and 2005 is not evidence that Prehn is not now owed a back salary. In fact, it would have been illogical for Prehn to receive a salary from the proceeds of his loans and advances (as opposed to simply receiving loan repayments) during such time period because cash-strapped Source 1 would be accruing more interest on the loan balances and paying additional payroll taxes unnecessarily.

The pre-formation memoranda are even less compelling to show that Prehn is not owed back salary. Offering pre-formation strategy memoranda and negotiations from 2002 over terms and issues that Prehn testified were eclipsed, modified, and, in some cases, never actually implemented, does not show that a back salary agreement never existed and that back salary is not now owed. It shows only that, prior to formation of the partnership, Prehn and Hodge were engaged in developing a business plan, and working to grow the business. Prehn's testimony that he had accrued, and is still owed, back salary pursuant to an agreement with Hodge and Source 1 was unrebutted by Hodge or any other witness at trial.

The only defense offered by Hodge related to Prehn's loan is a confused amalgam of double-speak. On April 9, 2012, in response to Prehn's demand that his priority status as a creditor be honored prior to distributions, Hodge asserted that such loan "will go in default" because it was ***not*** tracked on ProfitMaker, which generates Source 1's balance sheets. (*Exh. 31.*) At trial, acknowledging that the books and records were not his area of expertise, Hodge asserted that Prehn's loan ***was*** tracked on ProfitMaker and had been paid off in full. (*Def. Closing at 6.*) Importantly, that statement was offered in reliance upon the bookkeeper, hired in December 2012, who told him that Prehn's nearly $80,000 loan balance had been paid in full

based on her reconciliation of Source 1 books from June 2012 to present. Hodge never testified to his own knowledge of that fact, and indeed conceded his actual understanding that the loan had not been repaid. Reading between the lines, it appears that Hodge's defense is that (a) Prehn's loan existed on April 9, 2012, but not in Profit Maker, (b) thereafter, the bookkeeper reconciled the accounts in ProfitMaker, and (c) finding no loan balance therein, the bookkeeper deemed the loan satisfied. Such a defense is illogical.

There exists substantial evidence that the Prehn loan and back salary existed. (*Exh. 168.*) The amount of the loan and back salary were documented by Hodge himself to the partners in an e-mail as recently as March 15, 2012. (*Exh. 23.*) Further, Prehn offered unrebutted testimony that, at Hodge's request, Prehn met with the company accountant in late 2008 to review the loan calculations. Furthermore, at Hodge's request, the loan was independently tracked by Jesse Arp beginning in January 2009. The fact that Hodge elected to have Mr. Arp track the loan in a separate excel spreadsheet, rather than including the loan in Source 1's income statements, is not Prehn's responsibility, and does not excuse Hodge's decision to make illegal distributions instead of paying off priority creditors.

Finally, the Defendants' suggestion at the close of page 6 of Defendants' Closing Argument that the amortization of Prehn's loan to Source 1 was somehow incorrect appears to be purposely confusing. Although the evidentiary source of his conclusion is far from clear, counsel appears to believe that Prehn, and thereafter Mr. Arp, utilized some type of unorthodox loan balance calculation that involves applying repayments to the principal, while continuing to charge interest on the full initial principal balance. That suggestion is completely nonsensical. A review of the record reflects that the loan amortized in a normal fashion in accordance with generally accepted accounting principles. Each payment to Prehn first paid any accrued interest,

and the remainder reduced the principal. (*Exhibit 168.*) Prehn is owed $157,887 for the loan and back salary, plus interest on the loan amount from March 6, 2013.

H. Ratification of Distributions.

To avoid his personal liability to Source 1 for failing to pay creditors prior to making distributions, Hodge asserts that the Plaintiffs "ratified" the April Source 1 distributions in the amount of $131,115 "by agreeing, receiving and cashing the distributions." (*Def. Closing at 7.*) Although it is true that the Plaintiffs received and cashed the distributions, Hodge offers no authority for the proposition that such conduct was tantamount to "ratifying" the decision. As Hodge acknowledges, Prehn very clearly demanded repayment of his loan and back salary by Source 1 prior to Source 1 issuing the distributions. (*Exh. 31.*) Had he not cashed the distributions Prehn would have certainly invited even more expansive pillaging of Source 1's coffers, and would have thereby failed to mitigate his damages. Moreover, Prehn testified that no waiver or ratification was intended. The Plaintiffs' receipt and cashing of distribution checks ***did not*** ratify Hodge's conduct in violation of his duty of loyalty in accordance with Idaho Code Section 30-6-409(6). To the contrary, Prehn stated and at all times preserved his objection to the member distributions being made prior to repayment of his loan and back salary. Section 30-6-409(6) requires unanimous consent in order for ratification to be effective. *See* I.C. § 3-6-409(6). Hodge's wrongful distribution of $131,115 was not ratified.

I. The Purported "Dismissal" of Claims Related to the Auction.

In tacit recognition of the especially poor light cast upon Hodge by his actions related to the auction, and without supplying any authority, counsel returns to a variant of the argument he made when Hodge previously refused to disclose in discovery any financial information dated after May 18, 2012 (the auction date), and suggests that the scope of Hodge's bad acts at issue in this case stopped on that date. (See *Defendants' Memorandum in Support of*

Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel, filed Oct. 4, 2012, at 7.) That argument was flatly rejected by the Court at that time, and the argument is no more compelling today. Hodge goes so far as to suggest that the claims "concerning the auction process [are] moot" because certain causes of action added after the auction date were thereafter dismissed with prejudice by stipulation. (*Def. Closing at 17.*) It is nonsensical to suggest that, after a full trial, the claims and damages associated with Hodge's auction conduct—specifically a breach of the Operating Agreement, a breach of the duty of good faith and fair dealing, and a breach of his fiduciary duties—are somehow moot or may not be pursued because the Plaintiffs voluntarily dismissed certain other causes of action. Hodge's purposeful misstatement or misunderstanding regarding what conduct and actions are the subject of this lawsuit is without merit, especially in light of the evidence presented at trial.

III. CONCLUSION

The Plaintiffs' evidence, for which Exhibit 164, the Plaintiffs' Closing Argument and the foregoing Response provide clear guidance, demonstrates that Hodge and Source 2's liability to Source 1 for damages resulting from Hodge's bad acts. In the case of the lost shaker profits, the evidence demonstrated Hodge's liability to the Plaintiffs individually. Prehn has also proven Source 1's liability to him for repayment of the loan and back salary, as well as Hodge's liability to Source 1 related thereto. Consistent with the Plaintiffs' successful demonstration of liability and damages, the Court should enter judgment in their favor, both derivatively and directly, and against the Defendants.

DATED this 3 day of January, 2014.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of January, 2014, I caused a true and correct copy of the foregoing **PLAINTIFFS' CLOSING RESPONSE** to be served by the method indicated below, and addressed to the following:

E. Don Copple
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Michael O. Roe

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHALE L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIRBORNE,

Defendants.

Case No. CV-OC-2012-07728

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial in the above captioned matter, a review of the pleadings and closing arguments of the parties, and being duly advised in the premises, the Court makes the following Findings of Fact which are based upon substantial although disputed evidence, Conclusions of Law and decision.

A. FINDINGS OF FACT[1]

1. The Source Store LLC ("Source 1") was an Idaho limited liability company established in 2002 by Plaintiff Donnely Prehn ("Prehn") and Defendant Michael L. Hodge II ("Hodge").

[1] There is no transcript of the trial. The Court has relied upon its recollection of the testimony, as well as the Court's contemporaneous notes.

Prior to 2002, Hodge operated the business of Source 1 as a sole proprietorship. Both Hodge and Prehn entered into non-compete agreements.[2]

2. Until its dissolution in 2012, Source 1 developed, designed, produced and sold merchandise and apparel for promotional and marketing purposes. Source 1 appears to be a "drop ship" merchandiser, a seller who transfers its customer's purchase orders to manufacturers or wholesalers who ship the product direct to the customer. In 2011, drop ship sales accounted for 96.15% of total revenue.[3] In 2012, drop ship sales accounted for 99.97% of total sales.[4] In 2011, Source 1 reported drop shipment expenses equal to 53.03% of total sales.[5] In 2012, the drop shipment expenses were 55.22% of total sales.[6]

3. Initially, Hodge owned 85% and Prehn owned 15% of Source 1.[7] Plaintiff Dwight Bandak ("Bandak"), George M. Brown ("Brown") and Christopher Clairborne ("Clairborne") became owners at a later time.[8] At the time of Source 1's dissolution in 2012, Prehn and Bandak owned approximately 49% of Source 1.[9] Prehn's interest was 37.975%.[10] Hodge, Brown and Clairborne owned approximately 51%. Hodge's interest was 39.637%.[11]

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[2] Tr. Exs. 2,1011.
[3] Tr. Ex. 1009, December 2011 profit and loss statement.
[4] *Id.*, December 2012 profit and loss statement.
[5] *See* note 2 above.
[6] *See* note 3 above.
[7] Tr. Ex. 1
[8] All claims involving George M. Brown and Christopher Clairborne have been dismissed.
[9] Tr. Ex. 5
[10] *Id.*
[11] *Id.*

4. Hodge and Prehn worked for Source 1 since its inception in 2003. The relationship between Prehn and Hodge began to deteriorate in 2009. Prehn stopped working as a fulltime employee after December, 2010. Hodge worked as a fulltime employee until the dissolution of Source 1. Hodge was the managing member from inception until the dissolution of Source 1. Hodge was the main salesperson for Source 1. Source 1 had numerous other employees.

5. For a number of years, Source 1 did not generate a yearly profit. During this time, Prehn made loans to Source 1 with the understanding that interest would accrue at 10% per annum. During this time, Prehn was not paid salary for a number of months, with the understanding that the salary would be paid in the future without interest. In an e-mail dated December 31, 2011, Jesse Arp, Source 1's in-house accountant/bookkeeper informed Hodge and Prehn that the present balance of the Prehn loan was $79,232.51, and that the present balance of back salary owed to Prehn was $67,500.[12] Source 1 has not made any further payment to Prehn on account of these obligations. While Hodge disputes that these amounts are owed, the Court found Prehn's testimony credible and persuasive. Hodge acknowledged the Prehn loan balance of $79,232 in a June 4, 2012 offer to buy out Prehn's interest in Source 1.[13]

6. Source 1 began to show a yearly profit beginning in about 2008. In 2010, Source 1 produced a total operating profit of $184,407 (6.66%) on total sales of $2,768,683.[14] In 2011, Source 1 produced a net operating profit of $279,976 (8.66%) on total sales of $3,231,612.[15]

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[12] Tr. Ex. 168.
[13] Tr. Ex. 23 at Bates SOURCE 1 633-34.
[14] Tr. Ex. 1009, December 2011 profit and loss statement.

7. In February, 2011, Hodge proposed a significant salary increase for himself. At the time, Hodge was paid a base salary of $60,000 per year. Hodge proposed a base salary of $144,000 per year. Prehn and Bandak disapproved the request. Hodge, Brown and Clairborne voted in favor of the proposal. The increase passed. As a result, Hodge began to earn a base salary of $144,000 per year.

8. For many years, Source 1 was located at 1800 Broadway Avenue, Boise, Idaho. On November 1, 2011, the main office of Source 1 was moved to 3637 Lake Harbor Blvd, Boise, Idaho. Hodge purchased this building on April 5, 2012.[16] Prehn was unaware that Hodge became the owner of this property.

9. In a valuation dated February 3, 2012, a business brokerage firm determined that the most probable selling price for the sale of Source 1 was $1,367,068.[17]

10. On March 15, 2012, Hodge made a proposal to purchase Prehn's interest based on the February appraisal, discounted by 35% as a minority interest.[18] Hodge proposed a price of $337,000.[19] Prehn did not agree to this proposal.

11. On April 4, 2012, the members unanimously voted to dissolve Source 1 as of April 1, 2012.

12. Source 1's Operating Agreement[20] contains the following provisions upon a vote to dissolve:

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[15] *Id.*
[16] Tr. Ex. 1045
[17] Tr. Ex. 23
[18] Tr. Ex. 23
[19] *Id.*
[20] Tr. Ex. 1.

14.2 Liquidation and Termination. Upon the happening of the Dissolution Events specified in *Section 14.1,* a Majority Vote of Membership Shares shall appoint a liquidator (the "Liquidator"), who may or may not be an agent or Representative of a Member. The Liquidator shall proceed diligently to wind up the affairs of the Company and make final Distributions as provided in this Agreement and in the Act. The costs of liquidation shall be born as a Company expense; in addition, any Member who performs more than *de minimis* services in completing the winding up and termination of the Company pursuant to this *Article 14* shall be entitled to receive reasonable compensation for services performed. Until final Distribution, the Liquidator shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the Liquidator are used as follows:

(g) Accounting. As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(h) Notice. The Liquidator shall cause the notice described in Section 53-648 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 53-648.

(i) Winding Up, Liquidation and Distribution of Assets. The Liquidator shall sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members and Assignees in kind) and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

(i) *First,* payment of creditors, including Members and their Affiliates who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, other than liabilities for Distribution to Members;

(ii) *Second,* to establish any Reserves that the Liquidator deems reasonably necessary for contingent or unforeseen obligations of the Company and, at the expiration of such period as the Liquidator shall deem advisable, the balance then remaining in the manner provided in subparagraph (iii) below;

(iii) *Thereafter,* by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation), to the Members and Assignees in accordance with the positive balances in their Capital

Accounts, after giving effect to all Capital Contributions, Distributions and allocations for all periods.

(j) Purchase of Company Assets. Except as provided in *Section 14.2* above, any Member shall have the right to bid on any sales of assets of the Company made pursuant to this *Article 14.*

13. Hodge, Brown and Clairborne voted to appoint Hodge as the Liquidator for Source 1. Hodge agreed to act as Source 1's Liquidator.

14. On April 13, 2012, the members participated in a telephone conference call with counsel for Source 1.[21] The members discussed the process of dissolution in some detail. Hodge estimated that the Source 1 staff could be reduced by half to fill the open orders, and that the orders could all be filled by the first week in June.[22] Hodge predicted that filling the existing purchase orders would be profitable.[23]

15. On April 16, 2012, Brown filed a Certificate of Organization for The Source LLC ("Source 2") listing Hodge, Brown and Desiree Clairborne as members.[24] Hodge is the majority owner and managing member of Source 2.

16. The Statement of Dissolution for Source 1 was filed on April 25, 2012.[25]

17. Following dissolution, both Prehn and Hodge intended to form new companies to compete for the business formerly conducted by Source 1.

18. Prehn and Bandak filed this action on April 27, 2012.

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[21] Tr. Ex. 132
[22] *Id.* t pp. 34-35.
[23] *Id.* at p. 36.
[24] Tr. Ex. 41
[25] Tr. Ex. 57

19. On May 17, 2012, the parties stipulated to the entry of the Order Re: Dissolution of the Source Store, LLC (Source 1) and Related Matters. Among other things, the Order provided as follows:

> Section 1. The dissolution and winding up of Source 1 (the "Dissolution") shall be completed as soon as is reasonably practicable, with the participation and cooperation of all parties, in a manner which is fully transparent, accountable, fair and equitable to all members of Source 1 and with a view to discharging all legitimate debts and other obligations of Source 1 and maximizing the return and final distribution of all remaining funds to all Source 1 members.
>
> Section 2. The parties stipulate and agree that there are approximately $900,000.00 in open purchase orders from Source 1 customers in various stages of processing, which are assets of Source 1 (the "Existing Purchase Orders"). As part of the Dissolution, the Existing Purchase Orders shall be processed by Source 1, using Source 1 offices, equipment and personnel, in a manner consistent with the parameters set forth in paragraph 1 above.
>
> Section 4. The parties further stipulate and agree that it is in the best interests of Source 1 and its members that, during and pursuant to the Dissolution, the overhead and other expenses of Source 1 be reduced to the absolute minimum necessary to complete the Dissolution, including without limitation the processing of the Existing Purchase Orders and the sale of the Assets, in order to maximize the return and final distribution of funds to all Source 1 members. Defendant Hodge will generate a proposed budget for the completion of the Dissolution and circulate it to all the parties as soon as possible. Defendant Hodge will identify those persons necessary to complete the processing of the Existing Purchase Orders with the understanding and purpose of reducing the overhead and expense to the absolute minimum necessary to complete the Dissolution.
>
> Section 6. The parties have stipulated and agree that both Prehn and Hodge have been and are currently bound by their respective Non-Compete Agreements . . . Accordingly, Prehn and Hodge shall continue to be bound by and comply with such Non-Compete Agreements, according to their terms and conditions, until May 18, 2012, at which time each party including Prehn and Hodge, shall be released from all obligations of confidentiality to or in connection with Source 1.

Section 8. No party shall divert, employ or otherwise use any Source 1 asset, including without limitation the Assets or Source 1 employees, to or for the benefit of Source 2 or any other person or entity.

20. At about the same time that Hodge began to act as the Liquidator of Source 1, Hodge began to operate Source 2. Source 2 is essentially a duplicate of Source 1. Source 2 develops, designs, produces and sells merchandise and apparel for promotional and marketing purposes. The main office for Source 2 was the same office used by Source 1. Source 2 employed many of the same employees who had been working for Source 1. Source 2 had the same customer base as Source 1. The same employees who were employed by Source 2 were the employees who assisted in completing the existing purchase orders for Source 1.

21. Acting as the Liquidator, Hodge was responsible for selling the assets of Source 1. The Source 1 assets were sold in an auction that took place on May 18, 2012. The assets were divided into five lots as follows: 1. Shaker cup molds (possessed and used by a third party to manufacture Source 1 shaker cups); 2. Embroidery machines (used to customize Source 1 customer merchandise); 3. Office inventory (desks, computers, phones, software); 4. Intellectual property (good will and non-tangible property including names); 5. All lots. Prehn and Hodge submitted the following bids:[26]

Shaker cup molds
Hodge: $40,200
Prehn: $96,000

Embroidery machines

[26] Tr. Exs. 1060, 1061, 1062.

Hodge: $10,010
Prehn: $ 9,000

Office inventory
Hodge: $ 6,000
Prehn: $15,100

Intellectual Property
Hodge: $44,200
Prehn: $ 5,100

All of lots 1-4
Hodge: $105,010
Prehn: $125,200

Prior to the auction, the shaker cup manufacturer estimated that the molds had a value of $40,000 to $50,000, if used to manufacture cups.[27] As scrap metal, the molds had a value of $1,900.[28] In the days following the auction, Hodge asserted that because Hodge was the high bidder on the intellectual property, no other purchaser of the molds could use the molds to manufacture shaker cups without violating the intellectual property rights which Hodge received as the high bidder on this lot.[29] As a result, Prehn elected not to pay Source 1 for the items for which Prehn was the high bidder. Until Hodge took the position that the use of the molds would violate Hodge's rights, Prehn intended to use the molds in a new business venture to sell shaker cups. In the end, Hodge deemed himself the lone and successful bidder, and paid Source 1 $105,010, his bid for all of lots 1-4.

[27] Tr. Ex. 66
[28] *Id.*
[29] Tr. Exs. 71, 73

22. Hodge did not use any of the proceeds from the auction to repay any part of the Prehn loan or Prehn's back salary.

23. Prior to its dissolution, Source 1 paid a deposit of $36,000 to the shaker cup manufacturer to obtain a discount applied to shaker cup orders. Source 1 only used $17,712.17 of the credit.[30] The balance of this credit, $18,287.83 was used by Source 2 to obtain the discounts for Source 2 shaker cup orders. Source 2 did not pay Source 1 for the balance of the credit.

24. Prior to dissolution, Source 1 entered an agreement to obtain a second shaker cup mold for $31,000. Source 1 paid a deposit of $12,400 for the second shaker cup mold, leaving a balance of $18,600. Source 2 used the Source 1 deposit as a Source 2 asset.[31] Source 2 later paid the balance and obtained the second mold. Source 2 did not pay Source 1 for the deposit made by Source 1.

25. Source 1 purchased a license to use "Profit Maker" software for its business. Source 1 paid $8,000 to obtain the original license and its employees spent time making improvements and adding features. Hodge claims that he purchased the Profit Maker software at the Source 1 auction. However, prior to the May 18, 2012 auction, Hodge had already transferred this license to Source 2 without any reimbursement or payment to Source 1.[32]

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[30] Tr. Ex. 1016.
[31] Tr. Ex. 89.
[32] Tr. Exx. 46, 47, 48

26. On April 9, 2012, Source 1 received Purchase Order No. FL24000014 from its largest customer, Bodybuilding.com.[33] The amount of the purchase order was $233,481.84. This was a very large order. Source 1 did not process this order. In a purchase order dated June 14, 2012, Bodybuilding.com placed an identical order with Source 2 as Purchase Order FL24000021.[34] This purchase order was not filled by Source 1. This purchase order was filled by Source 2.

27. In 2011, Source 1 lent Hodge $40,000. By April 26, 2012, the balance was $20,084.61.[35] Hodge has not made any further payment on this loan. Hodge asserts he voluntarily reduced his salary from Source 1 in 2012, and that the reductions should have been credited against the remaining loan balance.

28. Source 1 provided Hodge with a vehicle. On April 26, 2012, Source 1 still owed $19,761.22 on the vehicle. As of April 31, 2012, Source 1 showed that the vehicle had a value of $36,654.27.[36] Hodge paid off the balance owed by Source 1 on this vehicle on or about April 26, 2012.

29. After the dissolution of Source 1, on a number of occasions, funds were transferred from Source 1 to Source 2 including the following:

$1,245.00 on May 29, 2012[37]
$2,526.48 on July 12, 2012[38]

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[33] Tr. Ex. 76, pp. 10-11.
[34] Tr. Ex. 76.
[35] Tr. Ex. 1056
[36] Tr. Ex. 1009, April 2012 balance sheet.
[37] Tr. Ex. 134, Bates 2033
[38] *Id.* Bates 2049

$1,157.50 on July 20, 2012[39]
$1,157.50 on August 16, 2012[40]
$5,736.05 on October 4, 2012[41]
$1,000.00 on December 11, 2011[42]
$7,000.00 on October 15, 2012[43]
$2,300.00 on October 19, 2012[44]

In addition, on October 10, 2012, Source 1 made a transfer of $49,680.00 re: "Hodge loan".[45]

30. Acting as the Liquidator, Hodge was responsible for completing the existing Source 1 purchase orders. The Source 1 purchase orders were completed by September 2012.

31. Counsel for Source 1 filed a Report of Wind Up with the Court on January 17, 2013 which included financial statements for 2012 showing total sales of $1,608,570 and a net operating loss of <$620>. The Report stated there was a cash balance of $20,547.86 which was subject to ongoing litigation expenses. The Liquidator did not make any distributions or payments to any of the members of Source 1.

32. For the period January through March, 2012, Source 1 had net sales of $782,854, and generated an operating profit of $83,135 or 10.62% for that period.[46] During these three (3) months, Source 1 reported General and Administrative expenses totaling $189,799.55 or 24.24% of total sales.[47]

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[39] *Id.*
[40] *Id.* Bates 2057
[41] *Id.* Bates 2063
[42] *Id.* Bates 5208
[43] Tr. Ex. 133, Bates 2097
[44] *Id.*
[45] *Id.* Bates 2096
[46] Tr. Ex. 1009.
[47] *Id.*

33. For the period April through December, 2012, Source 1 had net sales of $825,716,[48] and an operating loss of <$83,755> or <10.13%>.[49] These results reflect that during the dissolution period, Source 1 used up the net operating profit that had been earned from January to March 2012. These results also reflect that during the dissolution period Source 1 exhausted all or nearly all of the proceeds from the asset auction.

34. For the period January through March, 2012, Source 1 reported paying Hodge a total of $26,124, an average of $8,708 per month.[50]

35. For the period April through December, 2012, Source 1 reported paying Hodge a total $97,386, an average of $10,821 per month.[51] Source 1 paid Hodge $6,000 in January 2013.[52] In 2012, Source 2 paid Hodge $9,999.97.[53]

36. During the liquidation period, Source 1 incurred significant additional legal and accounting fees. For the period January through March, 2012, Source 1 reported total legal and accounting fees of $2,417. For the period April through December, 2012, Source 1 reported total legal and accounting fees of $59,495.84.[54]

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[48] *Id.* Source 1 reported total sales of $1,608,570 for 2012. Subtracting the sales from March 2012 year to date profit and loss statement ($782,854), shows a total of $825,716 in sales after March 31, 2012.

[49] *Id.* This number is derived by adding the profit or <loss> from the 2012 month to date profit and loss statements for April, May, June, July, August, September, October, November and December.

[50] *Id.*

[51] *Id.* The year to date payments to Hodge from the March profit and loss statement was subtracted from the December year to date payments to Hodge to determine the payments attributable to the period April to December 2012. ($545,097 - $189,799 = $355,298)

[52] *Id.* January 2013 profit and loss statement.

[53] Tr. Ex. 123.

[54] Tr. Ex. 1009. The year to date Legal and Accounting expenses from the March profit and loss statement was subtracted from the December year to date Legal and Accounting expenses to determine the payments attributable to the period April to December 2012.

B. CONCLUSIONS OF LAW

1. The Court concludes that, at the time of the dissolution, Source 1 owed Prehn $67,500 in back salary. Source 1 has not repaid this obligation. Under the Operating Agreement, Hodge had an obligation to pay this obligation from the proceeds of the asset sale. Hodge violated the Operating Agreement by failing to use the auction proceeds to pay all or part of this obligation at or near the time of the auction.

2. The Court concludes that, as of December 29, 2011, Source 1 owed Prehn a loan balance of $79,232.51, with interest accruing at the rate of 10% per annum. Source 1 has not paid this obligation. Under the Operating Agreement, Hodge had an obligation to pay this obligation from the proceeds of the asset sale. Hodge violated the Operating Agreement by failing to use the auction proceeds to pay all or part of this obligation at or near the time of the auction.

3. To make out a claim for breach of fiduciary duty, Prehn and Bandak must demonstrate that Hodge was a fiduciary and that Hodge breached his fiduciary duties. *Tolley v. THI Co.*, 140 Idaho 253, 261, 92 P.3d 503, 511 (2004). It is settled that a member of a limited liability company is a fiduciary, both under Idaho's original limited liability company act and the 2008 revised act. *Bushi v. Sage Health Care, PLLC*, 146 Idaho 764, 769, 203 P.3d 694, 699 (2009). The Court will also find that as Liquidator of Source 1, Hodge owed fiduciary duties to Source 1 and the members. As a fiduciary, Hodge owed Source 1 and the members the duties of trust and loyalty. "The measure of damages in an action for breach of fiduciary duty is the same as the measure of damages in an action

for breach of trust." *Pickering v. El Jay Equip. Co., Inc.*, 108 Idaho 512, 517, 700 P.2d 134, 139 (Ct. App. 1985) (citing *Hudson v. American Founders Life Insurance Company of Denver,* 151 Colo. 54, 377 P.2d 391 (1963) and RESTATEMENT (SECOND) OF TRUSTS § 205 comment i (1959)). A fiduciary who should have returned a profit, is liable for that profit.

4. The Court concludes that Hodge violated his fiduciary duties by failing to minimize the general and administrative expenses associated with completing Source 1's existing purchase orders, resulting in a net loss to Source 1 where there should have been a net profit.

Source 1 was profitable in 2010 and 2011, the two (2) years immediately preceding the year of its dissolution. Source 1 operated as a going concern from January to March 31, 2012. Thereafter, Source 1 was winding up its affairs. To better understand the costs and expenses associated with the post-dissolution operations of Source 1, the Court has compared costs and expenses of Source 1 as a going concern as opposed to the costs of its operations in liquidation.

	January – March[55]	April – December[56]
Total Sales	$782,854	$825,716
Total Costs of Sales	$478,943 (61.18%)	$541,859 (65.62%)
Gross Profit	$303,910 (38.82%)	$283,375 (34.32%)
Selling Expenses	$ 31,571 (4.03%)	$21,992 (2.66%)
General/Admin.	$189,799 (24.24%)	$355,298 (43.03%)
Total Profit/<Loss>	$83,135 (10.62%)	<$83,755> (<10.13%>)

[55] Tr. Ex. 1009. Year to date profit and loss statement March 2012.

[56] *Id.* Except for the total loss figure, the figures in this column were derived by subtracting the item total from the March 2012 year to date profit and loss statement from the item total reported in the December 2012 year to date profit and loss statement. The total loss figure is explained at n. 49 above.

From January to March 2012, Source 1 generated an operating profit of 10.62%. In 2010 the profit margin was 6.66%. In 2011, the profit margin was 8.66%. The costs of sales (61.17%/65.62%), gross profit 38.82%/34.32%), and selling expenses (4.03%/2.66%) for January to March as compared to April to December are very similar. The 2012 results in these categories are also very similar to the 2010 and 2011 results (costs of sales: 31.16%/61.95%; gross profit: 38.84%/38.05%; selling expenses: 4.10%/3.76%).[57]

The glaring anomaly is the increase in total General and Administrative expenses. These expenses represent 24.24% of total sales for the January to March 2012 period. In 2011, these same expenses represented 25.34% of total sales.[58] In 2010 the General and Administrative expenses were 27.61% of total sales.[59] In sharp contrast, the General and Administrative expenses for the period April to December, 2012 were 43.03% of the total sales for the same period. The last purchase Order was completed in September, 2012. However, Source 1 reported losses totaling $74,600 for the months of October, November and December, 2011 including payments to Hodge of $33,230.[60] The Court concludes that the significant increase in the General and Administrative expenses is the reason for the losses incurred in completing the existing purchase orders, as well as the overall loss for 2012. Except to point to litigation expenses related to this action, Defendants have been unable to demonstrate that there were legitimate business reasons that explain how or

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[57] *Id.*, December 2011 year to date profit and loss statement, December 2011 prior year to date profit and loss statement, 2012 year to date profit and loss statement.
[58] Tr. Ex. 1009, December 2011 year to date profit and loss statement.
[59] *Id.*
[60] Tr. Ex 1009. October, November, December 2012 profit and loss statements.

why these expenses increased so dramatically.[61] The Court will address these legal and accounting expenses below.

As a drop ship merchandiser, Source 1 was not the manufacturer, wholesaler or shipper of the merchandise. During the dissolution period, it makes sense that the general and administrative expenses should have been less, not more. Certainly, that is what Hodge and Brown predicted in April, 2012 when the members were discussing the dissolution process with the attorney for Source 1.

The General and Administrative expenses include a salary of $97,386 paid to Hodge for the period April to December.[62] Source 1 paid Hodge a salary of $6,000 in January 2013. The payments to Hodge constitute a clear example of the failure to minimize general and administrative expenses. In contrast, Source 2 paid Hodge a total of $9,999.97 for 2012.[63] During the dissolution period, Hodge was working to establish Source 2, and succeeded in generating more that $1 million in sales for Source 2.[64]

It appears that Source 1 paid rent of $2,013 at the old location.[65] In December, 2011, Source 1 paid rent in the amount of $2,900 per month, at the new location.[66] The total rent paid in 2011

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[61] During the trial, over objection, Prehn testified that the company's accountant/bookkeeper Jesse Arp told Prehn that Hodge told Arp that Hodge intended to bleed the company dry to avoid paying Plaintiffs what they were owed. Upon reflection, the Court concludes that this statement is hearsay, and should not have been admitted. The Court will disregard this testimony.

[62] Tr. Ex. 1009. The payments to Hodge for the period January to March 2012 were deducted from the payments to Hodge reflected in the year to date December 2012 profit and loss statement.

[63] Trial Exhibit 123.

[64] Tr. Ex 123.

[65] Tr. Ex. 1009, December 2011 profit and loss statements showing year to date rent for December 2010 in the amount of $24,156 or $2,013 per month, and showing monthly rent for December 2011 of $2,900.

[66] *Id.*

was $34,672, an average of $2,889 per month.[67] From January to March 2012, Source 1 paid a total of $9,056 in rent, an average of $3,018 per month.[68] In April, 2012, the month that Hodge purchased the office building, Source 1 made a rental payment of $11,400, which appears to be first and last month rent of $5,700 per month.[69] For the period April through July, 2012, the last month Source 1 reported paying rent, Source 1 paid a total of $23,365, an average of $5,841 per month.[70] During June and July, the operations of Source 1 and Source 2 were conducted from the same office. This is another example of the failure to minimize Source 1 expenses.

The Court concludes that the operating loss on the existing purchase orders is the result of Hodge's breach of his fiduciary duty to minimize the costs to complete the purchase orders. The Court did not find the opinions of Hodge's expert, Peter Butler, persuasive or helpful. Mr. Butler analyzed Prehn's damages calculations and found fault. Mr. Butler did not present any analysis of Source 1's expenses during the dissolution period. The Court did not find the testimony of Source 2's bookkeeper, Janae Young, helpful or persuasive. Her analysis was based on assumptions provided by Hodge.

5. The Court concludes that the failure to minimize the costs of completing the existing purchase orders also constitutes a breach of Article 14.2 of Source 1's Operating Agreement, and is a violation of the Court's May 17, 2012 Order Re: Dissolution of the Source Store, LLC (Source 1) and Related Matters.

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[67] *Id.*, December 2011 profit and loss statement.
[68] *Id.* April 2012 profit and loss statement.
[69] *Id.*, April 2012 profit and loss statement.

6. The Court also concludes that Hodge breached his fiduciary duty to Source 1 by converting the April 9, 2012 Bodybuilding.com purchase order of $223,481 to Source 2. Bodybuilding.com placed this purchase order with Source 1 prior to the formation of Source 2, and prior to the filing of Source 1's dissolution notice. This purchase order came about through the efforts of Source 1. Bodybuilding.com placed the same purchase order to Source 2 in June 2012. Prehn and Bandak have shown that Hodge improperly redirected this large sale to Hodge's new business, Source 2.

7. The total of purchase orders that should have been filled by Source 1 during the dissolution period was $825,716 + $223,841 = $1,049,557. The profit margin for 2011 was 8.66%. Using this profit margin, Source 1 could have generated an operating profit of $90,891 for completing the purchase orders.

Source 1 did incur extraordinary legal and accounting fees during the dissolution period. As a result, the Court will deduct the legal and accounting fees incurred from April to December of $59,496, which results in a net operating profit of $31,395 for the period April to December 2012.[71] The Court concludes that Source 1 should have generated an operating profit of $31,395 for completing the purchase orders.

For the period January to March, 2012, Source 1 generated an operating profit of $83,135. The operating profit for 2012 should have been $114,530 ($31,395 + $83,135).

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[70] *Id.*, subtracting January to March rental from March 2012 year to date profit and loss statement from July year to date rent total.

8. There was some evidence that counsel for Hodge and Source 2, Mr. Guerricabeitia, may have billed Source 1 for legal services. The evidence on whether Source 1 actually paid any such fees was not clear. Plaintiffs have not proven that such fees were actually paid by Source 1.

9. As detailed in ¶ 29 above, there was evidence that funds from Source 1 were transferred to Source 2. Some of these were explained. Others were not. However, since the Court has determined that there will be a recovery based upon the operating profit that Source 1 should have earned, the unexplained transfers do not result in any further damage or loss.

10. Prehn and Bandak cannot maintain a derivative action unless they can show that a demand on Source 1 or its managing member would have been futile. *Cf. Orrock v. Appleton*, 147 Idaho 613, 614, 213 P.3d 398, 399 (2009). Having reviewed the Amended Complaint, the Court will find that Plaintiffs have sufficiently pled circumstances that would constitute futility. The Court also find that these circumstances were proven at trial. Prehn and Bandak may maintain derivative claims on behalf of Source 1.

11. The Court will find that Source 1 should not have cancelled the balance Hodge owed on his loan in exchange paying the balance Source 1 owed on this vehicle. The amount owed on the vehicle was $19,761.22. At the time, the vehicle had a value of $36,654.27. By paying the loan balance of $19,761.22, Hodge obtained a vehicle worth $36,654.37. The Court concludes this transaction was a breach of Hodge's fiduciary duty. Hodge improperly obtained a benefit of $16,893.05. Hodge must repay this amount to Source 1.

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[71] Tr. Ex. 1009. This amount is derived by subtracting the legal and accounting expenses from the January to March

12. Since Hodge did not make any further payment on the loan, the Court concludes that Hodge is also liable for the personal loan balance of $20,084.61. Hodge asserted that he was entitled to a salary as Source 1's liquidator of $12,000 per month and that he did not take the full salary. Hodge argues that the difference should be applied to the loan. The Court does not agree. Under the Operating Agreement, Hodge was entitled to "reasonable compensation" as the Liquidator. During the dissolution period, Hodge was simultaneously acting as the Liquidator for Source 1, and working for his new venture, Source 2. Hodge had Source 1 pay himself $103,386 to process the existing purchase orders of $825,716, and to liquidate Source 1. Hodge had Source 2 pay Hodge $9,999.97 during the same period. The Court concludes that Hodge was grossly insufficiently compensated by Source 2, and grossly overcompensated as Liquidator for Source 1. Hodge is not entitled to any "credit" for not drawing a salary of $12,000 per month as the Source 1 Liquidator.

13. "The elements of unjust enrichment are that (1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit." *Indian Springs L.L.C. v. Andersen*, 154 Idaho 708, 712, 302 P.3d 333, 337 (2012) (quoting *Teton Peaks Inv. Co., LLC v. Ohme,* 146 Idaho 394, 398, 195 P.3d 1207, 1211 (2008)). Source 2 obtained a number of assets from Source 1 including the ProfitMaker software, the deposit on the second mold, and the balance of the discount for shaker cup purchases. The Court will find that Source 1 conferred these benefits

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2012 year to date profit and loss statement from the December 2012 year to date legal and accounting expense total.

on Source 2; that Source 2 appreciated the benefits; and that it would be inequitable to permit Source 2 to accept these benefits without payment of the value of the benefits. The Court also finds that Hodge breached his fiduciary duty to Source 1 by permitting these assets to be transferred without any compensation to Source 1. The Court will also find that the conveyance of these assets was a violation of the Operating Agreement. The Court finds that the value of the ProfitMaker software license is $8,000; the value of the shaker cup credit is $18,287.83; and the value of the mold deposit is $12,400.

The Court also concludes that Hodge was unjustly enriched by paying less than the value of the vehicle he obtained from Source 1 and by having his personal loan forgiven.

14. The Court concludes that Hodge breached his fiduciary duties to Source 1 and the members by the manner in which he orchestrated the asset auction. Hodge created the situation by separating the intellectual property from the molds. By placing such a high bid on the intellectual property, Hodge assured that he would be certain to be the high bidder on that item. Hodge bid $44,000. Prehn bid $5,000. As high bidder on the intellectual property, Hodge then asserted that no one except Hodge could use the molds for the intended purpose. Prior to the auction; Hodge did not advise any bidder that the molds could not be used for production unless the bidder also acquired the intellectual property. Hodge assured that no reasonable bidder would pay for the molds if the molds could not be used to manufacture cups. But for Hodge's manipulation of the auction, Source 1 would have received a total $165,310 from the high bids of Prehn and Hodge. Instead, Source 1 received $105,010. The Court finds that Source 1 has been damaged in the amount of $60,300.

15. Prehn asserts that if he had been able to purchase the molds, he would have been able to start a new venture manufacturing and selling shaker cups. Prehn asserts that he sustained lost profits of $236,376. The Court will not award any damages based upon profits predicted for a business enterprise that never materialized. Such damages would be entirely speculative.

Based upon the foregoing, the Court awards damages as follows:

1. Source 1 owes Prehn for the Prehn loan in the amount of $79,232 with interest at 10% from December 29, 2011. Hodge is jointly and severally liable for this amount.
2. Source 1 owes Prehn's back salary in the amount of $67,500. Hodge is jointly and severally liable for this amount.
3. Source 2 owes Source 1 $8,000 for the ProfitMaker software license, $18,287.83 for the shaker cup discount, and $12,400 for the cup mold credit. Hodge is jointly and severally liable for these amounts.
4. Hodge owes the following amounts to Source 1:
    a. $60,300 for the auction shortfall.
    b. $114,530 in lost profits for failing to minimize the cost of completing the existing purchase orders.
    c. $16,893.05 for the difference between the value of the vehicle and the loan paid by Hodge.
    d. $20,084.61 for the balance of Hodge's personal loan.

Counsel for Plaintiffs is directed to submit appropriate forms of judgments.

It may be appropriate or necessary to appoint a receiver to complete the winding up and dissolution of Source 1. The Court will have the clerk schedule a hearing on this issue.

IT IS SO ORDERED.

Dated this 19 day of February, 2014.

Patrick H. Owen
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of February, 2014, I mailed a true and correct copy of the within instrument to:

MICHAEL O. ROE
MOFFATT THOMAS BARRETT ROCK
& FIELDS, CHARTERED
PO BOX 829
BOISE, ID 83701-0829

ED GUERRICABEITIA
DAVISON COPPLE COPPLE & COPPLE
PO BOX 1583
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

Michael O. Roe, ISB No. 4490
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS**

COME NOW, Plaintiffs, Donnelly Prehn ("Prehn") and Dwight Bandak ("Bandak") (collectively, the "Plaintiffs"), by and through undersigned counsel of record, and pursuant to rules 54(d)(1) and 54(e)(1) of the Idaho Rules of Civil Procedure and Idaho Code §§ 12-120(3), 12-121 and 30-6-906(2), hereby file this Plaintiffs' Memorandum of Attorney Fees and Costs. This Memorandum of Attorney Fees and Costs is supported by the Affidavit of Michael O. Roe (the "Roe Affidavit"), filed concurrently herewith.

I.
RECAPITULATION OF COSTS AND ATTORNEY FEES

Plaintiffs hereby submit the following recapitulation of the costs and attorney fees they incurred in the prosecution of this litigation brought against The Source Store, LLC ("Source 1"), Michael L. Hodge, II ("Hodge"), and The Source, LLC ("Source 2")[1], which costs and fees, to the best of Plaintiffs' knowledge and belief, are true and correct and in compliance with I.R.C.P. 54(d)(1) and 54(e)(1):

COSTS (Sections II and III, *Infra*)	
I.R.C.P. 54(d)(1)(C) Costs as a Matter of Right:	$ 5,507.40
I.R.C.P. 54(d)(1)(D) Discretionary Costs:	$ 3,062.05
TOTAL COSTS:	**$ 8,569.45**
ATTORNEY FEES (Section IV, *Infra*)	
Michael O. Roe (partner) – 624.8 hours @ $225/hr	$ 140,580.00
Matthew J. McGee (associate) – 403.6 hours @ $155/hr	$ 62,558.00
Tiffiny M. Hudak (paralegal) – 504.2 hours @ $100/hr	$ 50,420.00
SUBTOTAL	$ 253,558.00
(Less courtesy discounts)[2]	$ (3,543.68)
TOTAL ATTORNEY FEES	**$ 250,014.32**
TOTAL COSTS AND ATTORNEY FEES	**$ 258,583.77**

[1] In addition, initially George Michael Brown ("Brown") and Christopher Claiborne ("Claiborne") were also named as Defendants. Brown and Claiborne were dismissed as parties to the litigation prior to trial.

[2] During the course of this litigation, Moffatt Thomas provided courtesy discounts to Plaintiffs in the total amount of $3,543.68. Therefore, Plaintiffs have deducted this amount from the total fees sought in this Memorandum of Attorney Fees and Costs.

II.
I.R.C.P. 54(d)(1)(C) / COSTS--ITEMS ALLOWED--AS A MATTER OF RIGHT

The following costs were actually paid and Plaintiffs are entitled to such costs as a matter right:

1. Court Filing Fees:

04/27/2012 – Filing Fee – Complaint	$	88.00
12/17/2012 – Filing Fee – Interstate Subpoena Duces Tecum (North Carolina Superior Court for Deposition Subpoena Duces Tecum to Jesse Arp)	$	200.00
Total Court Filing Fees	**$**	**288.00**

2. Actual Fees for Service of Process:

04/27/2012 – Service Fee to Tri-County Process Serving (service of complaint upon Brown)	$	90.40
04/30/2012 – Service Fee to Tri-County Process Serving (service of complaint upon Claiborne)	$	221.20
05/01/2012 – Service Fee to Tri-County Process Serving (service of complaint upon Hodge)	$	95.00
05/01/2012 – Service Fee to Tri-County Process Serving (service of complaint upon Source 1)	$	36.00
05/01/2012 – Service Fee to Tri-County Process Serving (service of complaint upon Source 2)	$	36.00
11/20/2012 – Service Fee to Tri-County Process Serving (service of subpoena duces tecum upon Syringa Bank)	$	85.00
11/20/2012 – Service Fee to Tri-County Process Serving (service of subpoena duces tecum upon Mike Baldner)	$	85.00
11/21/2012 – Service Fee to Tri-County Process Serving (service of subpoena duces tecum upon Chris Halstead, with BodyBuilding.com)	$	94.00
12/02/2012 – Service Fee to Tri-County Process Serving (service of subpoena duces tecum upon Jesse Arp in North Carolina)	$	545.00
12/18/2012 – Service Fee to Tri-County Process Serving (service of amended subpoena duces tecum upon Chris Halstead)	$	94.00
12/18/2012 – Service Fee to Tri-County Process Serving (service of subpoena duces tecum upon BodyBuilding.com)	$	90.40
12/19/2012 – Service Fee to Tri-County Process Serving (service of subpoena duces tecum upon Jade Welch)	$	122.00

03/19/2013 – Service Fee to Tri-County Process Serving (service of trial subpoena upon Neal Stuart)	$	85.00
03/19/2013 – Service Fee to Tri-County Process Serving (service of trial subpoena upon Mike Baldner)	$	85.00
03/20/2013 – Service Fee to Tri-County Process Serving (service of trial subpoena upon Janae Young)	$	85.00
03/20/2013 – Service Fee to Tri-County Process Serving (service of trial subpoena upon Brown)	$	36.00
03/20/2013 – Service Fee to Tri-County Process Serving (service of trial subpoena upon Blair Bews)	$	36.00
11/25/2013 – Service Fee to Tri-County Process Serving (service of amended trial subpoena upon Brown)	$	50.00
11/26/2013 – Service Fee to Tri-County Process Serving (service of amended trial subpoena upon Mike Baldner)	$	105.00
Total Actual Fees for Service of Process	**$**	**2,076.00**

3. Witness Fees:

12/05/2014 – Witness Fee for Jade Welch	**$**	**20.00**

4. Witness Travel Fees:

12/05/2014 – Witness Travel Fee for Jade Welch	**$**	**10.00**

5. Certified Copies of Documents Admitted as Trial Exhibits:

None

6. Cost of Trial Exhibits:

Reasonable Cost of Trial Exhibits, Not to Exceed $500[3]	**$**	**500.00**

7. Cost of Bond Premiums:

None

[3] Plaintiffs incurred a total cost of $1,014.57 for preparation of their trial and demonstrative exhibits. Pursuant to IRCP 54(d)(1)(C)(6), costs as a matter of right under this category may not exceed $500. Therefore, the remainder of this expense ($514.57) is claimed under discretionary costs, *infra*.

8. Reasonable Expert Witness Fees, not to Exceed $2,000 for Each Expert Witness:

None

9. Charges for Reporting and Transcribing Depositions:

02/11/2013 – 30(b)(6) Deposition of Source 1	$	788.40
02/12/2013 – 30(b)(6) Deposition of Source 2	$	478.15
02/11/2013 – Deposition of Hodge	$	675.25
02/11/2013 – Deposition of Brown	$	671.60
Total Charges for Depositions Taken by Defendant	**$**	**2,613.40**

10. Charges for One Copy of any Deposition:

None

TOTAL COSTS UNDER I.R.C.P. 54(d)(1)(C)	**$**	**5,507.40**

III.
I.R.C.P. 54(d)(1)(D) / DISCRETIONARY COSTS

1. Westlaw Online Research

Legal Research re Application of Attorney Client Privilege between Corporation and its Counsel	$	431.55
Legal Research re Social Media Evidence	$	214.89
Subtotal Item 1:	**$**	**646.44**

2. Discovery

Computer Forensic Services	$	850.00
Scanning of Select Documents Following Inspection	$	670.64
Deposition Exhibits Prepared by the Court Reporter	$	140.40
Subtotal Item 2:	**$**	**1,661.04**

3. Mediation

1/2 of Mediation Fee to Brassey, Crawford & Howell	$	240.00
Subtotal Item 3:	**$**	**240.00**

4. Trial Exhibits in Excess of $500

Trial Exhibits and Demonstrative Exhibits for Trial	$	514.57
Subtotal Item 4:	$	**514.57**
TOTAL COSTS UNDER I.R.C.P. 54(d)(1)(D)	$	**3,062.05**

Plaintiffs contend that all of the costs enumerated above were necessary and exceptional in the prosecution of their claims, for the reasons more particularly set forth in the Roe Affidavit.[4] As such, Plaintiffs are entitled to an award of discretionary costs in the amount of $3,062.05.

IV.
I.R.C.P. 54(e)(1) ATTORNEY FEES.

A. Background.

On April 27, 2012, following a vote to dissolve Source 1, a promotional products company founded in 2002 and located in Boise, Idaho, the Plaintiffs sued Source 1, Source 2, and Hodge for breach of contract, breach of Hodge's fiduciary duty, unjust enrichment, and other causes of action. Brown and Claiborne were also named as defendants. A week later, Plaintiffs filed an application for a temporary restraining order and preliminary injunction, resulting in the issuance of an order governing the dissolution of Source 1 and ordering an auction of Source 1's assets. A second amended complaint was filed on June 29, 2012, addressing the conduct of the Defendants relating primarily to the auction of Source 1's assets. Defendant Claiborne filed a counterclaim against Plaintiffs on September 4, 2012, alleging multiple causes of action including unjust enrichment, breach of contract, and breach of fiduciary duty.

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[4] Recognizing that not all costs incurred by Plaintiffs were necessary and exceptional as required under I.R.C.P 54(d)(1)(D), Plaintiffs have not included their costs expended for certain routine services, including delivery messenger services, in-house imaging, and postage, in the total amount of $914.95.

Thereafter, the parties conducted discovery. Plaintiffs' nearly exclusive emphasis during the discovery phase was accessing the business and financial records of Hodge, Source 1 and Source 2. In response to Plaintiffs' discovery requests, Source 1 initially produced some documents and offered up for inspection and copying Source 1's server and hard copy records, eventually producing over 5,000 pages of records and 650 gigabytes of electronically stored information. Hodge produced approximately 700 pages of records. Source 2 initially refused to produce any records, but following a successful motion to compel filed by Plaintiffs, ultimately produced around 300 pages of records. Additionally, due to the lack of cooperation by Defendants in producing records responsive to Plaintiffs' discovery requests, Plaintiffs were forced to subpoena records from BodyBuilding.com, Source 1's largest customer, and Syringa Bank, with whom Source 1 and Source 2 held accounts. Four (4) depositions were taken by Plaintiffs.

As the discovery period closed, Plaintiffs narrowed their claims, Brown and Claiborne were dismissed as defendants, and Claiborne dismissed his counterclaims against Plaintiffs. The case proceeded to trial on December 2, 2013, on Plaintiffs' remaining causes of action. Trial consisted of four (4) days of presentation of evidence involving over 100 trial exhibits and testimony by multiple witnesses, including Defendants' accounting expert. Closing arguments were submitted in writing on December 23, 2013, together with submission of replies on January 3, 2014. This Court issued its decision on February 19, 2014, concluding that (1) Hodge breached the Operating Agreement of The Source Store, LLC (the "Operating Agreement") by failing to pay Prehn's loan; (2) Hodge breached the Operating Agreement by failing to pay Prehn's back salary; (3) Hodge breached the Operating Agreement, his fiduciary duties, and the Court's May 17, 2012 Order Re: Dissolution of the Source Store, LLC (Source 1)

and Related Matters (the "Dissolution Order"), by failing to minimize general and administrative expense associated with winding up Source 1's business; (4) Hodge breached his fiduciary duties by converting the BodyBuilding.com purchase order to Source 2; (5) Hodge breached his fiduciary duty to Source 1 by canceling the balance of the loan he received from Source 1; (6) the conveyance of certain Source 1 assets to Source 2 constituted unjust enrichment of Source 2 and a breach of the Operating Agreement by Hodge; (7) Hodge was unjustly enriched by paying less than the value of the vehicle he obtained from Source 1 and having his personal loan forgiven; and (8) Hodge breached his fiduciary duties by manipulating the auction of Source 1 assets. *See* Findings of Fact and Conclusions of Law at 14-22.

As the prevailing party, Plaintiffs now respectfully request an award of costs and attorney fees pursuant to Idaho Rule of Civil Procedure 54(e)(1), Idaho Code §§ 12-120(3), 12-121 and 30-6-906(2).

B. Plaintiffs Are The Prevailing Party.

"The determination of whether a litigant is the prevailing party is committed to the discretion of the trial court." *Sanders v. Lankford*, 134 Idaho 322, 325, 1 P.3d 823, 826 (Ct. App. 2000); *see also* I.R.C.P. 54(d)(1)(B). Idaho Rule of Civil Procedure 54(d)(1)(B) provides the standards governing the determination of the issue whether a party is a prevailing party. There are three (3) principal factors the trial court must consider when determining which party, if any, prevailed: "(1) the final judgment or result obtained in relation to the relief sought; (2) whether there were multiple claims or issues; and (3) the extent to which each party prevailed on each issue or claim." *Jerry Joseph C.L.U. Ins. Assoc., Inc. v. Vaught*, 117 Idaho 555, 557, 789 P.2d 1146, 1148 (1990).

In this case, Plaintiffs prevailed on multiple claims and issues, were allowed to bring derivative claims on behalf of Source 1, and were awarded damages. The Court disallowed a certain portion of damages associated with Hodge's auction-related misconduct—Prehn's lost profits associated with a new venture manufacturing shaker cups—but the Plaintiffs were otherwise successful in obtaining the requested relief related to Hodge's misconduct. *See generally*, Findings of Fact and Conclusions of Law. Plaintiffs have met the three (3) factors enumerated in *Vaught*, and are prevailing parties for purposes of an award of attorney fees and costs.

C. As The Prevailing Party In An Action Arising Out Of A Commercial Transaction, Plaintiffs Are Entitled To An Award Of Attorney Fees Under Idaho Code Section 12-120(3).

Idaho Code Section 12-120(3) specifically allows for the recovery of attorney fees by the prevailing party in cases involving a commercial transaction. The statute states, in pertinent part:

> In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and ***in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the Court, to be taxed and collected as costs.***

Idaho Code § 12-120(3) (emphasis added).

1. Hodge's contractual obligations, and breach thereof, relative to the Operating Agreement constitute commercial transactions under Idaho Code § 12-120(3).

Actions brought for breach of an operating agreement are considered commercial transactions and, therefore, are subject to the attorney fee provision of I.C. § 12-120(3). *See Johannsen v. Utterbeck*, 146 Idaho 423, 432, 196 P.3d 341, 350 (2008) (holding that the breach of an operating agreement of a company formed for commercial purposes constituted a

commercial transaction, thereby invoking the application of Idaho Code § 12-120(3)). In *Johannsen*, the parties formed a limited liability company and entered into an operating agreement for the purposes of developing real estate. The relationship between the parties later broke down, and the plaintiff filed suit against defendant for breach of contract, and sought preparation of an accounting and for dissolution of the company. The Supreme Court found that "the ***gravamen*** of this case is a commercial transaction where the Operating Agreement was entered into by the parties for the purpose of developing real property into a subdivision." *Johannsen*, 146 Idaho at 432, 196 P.3d at 350 (emphasis added).

In this case, the parties formed a limited liability company and entered into the Operating Agreement for commercial purposes. Specifically, the company was formed to "sell, market, and distribute corporate promotional products; . . ." *See* Roe Affidavit, Ex. A, Section 2.1, at 2. There can be no reasonable dispute that winding up or dissolving the company pursuant to the Operating Agreement, and the various contractual duties associated therewith, constituted a commercial transaction. *See Johannsen, supra.* Hodge's violation of the Operating Agreement in this connection is the gravamen of both the direct and derivative claims successfully prosecuted by the Plaintiffs against Hodge. In particular, the Court found that Hodge breached Source 1's Operating Agreement in multiple respects, including: (1) his failure to repay Prehn's back salary; (2) his failure to repay Prehn's loan; (3) his failure to minimize general and administrative expense associated with winding up Source 1's business (which conduct also violated the Dissolution Order); and (4) multiple other breaches of his fiduciary duties as manager and liquidator of Source 1. Such fiduciary duties were imposed not only as a matter of law, but by virtue of the Operating Agreement's express prohibition of disabling conduct. Breach of the Operating Agreement, and the conduct of Source 1's dissolution pursuant

to the Operating Agreement, are commercial transactions within the meaning of Idaho Code Section 12-120(3).

2. An award of attorney fees is mandatory under Idaho Code § 12-120(3).

Idaho appellate courts have held that an award of attorney fees in mandatory in cases arising out of a commercial transaction. *See, e.g., Freiburger v. J U B Engineers, Inc.*, 141 Idaho 415, 423, 111 P.3d 100, 108 (2005) ("Where a party alleges the existence of a contractual relationship within a commercial transaction, that claim triggers the application of the statute allowing attorney's fees for the party which prevails on a civil claim involving a commercial transaction."); *Lamprecht v. Jordan, LLC*, 139 Idaho 182, 75 P.3d 743 (Ct. App. 2003) ("A prevailing party in a civil action involving a commercial transaction has a statutory right to an award of reasonable legal fees."). To award attorney fees under Section 12-120(3), the commercial transaction must be integral to the claim and must provide the basis for recovery. *See Iron Eagle Development, LLC v. Quality Design Systems, Inc.*, 138 Idaho 487, 65 P.3d 509 (2003). In this case, Source 1's Operating Agreement, and the contractual duties and obligations imposed thereby and arising therefrom, are at the very heart of the case, and certainly provided the basis for Plaintiffs' claims against Hodge and Source 1.

D. Plaintiffs Are Also Entitled To An Award Of Attorney Fees Relative To Their Derivative Actions Brought On Behalf Of Source 1, Pursuant To Idaho Code § 30-6-906(2).

Idaho Code § 30-6-906(2) provides that the district court may award reasonable attorney fees for successful prosecution of derivative claims. As set forth in this Court's Findings of Fact and Conclusions of Law (February 19, 2014), Prehn and Bandak appropriately pursued derivative claims on behalf of Source 1, successfully proving that Hodge breached his fiduciary duties to Source 1 during liquidation by, among other things, failing to minimize the

costs of completing the existing purchase orders, manipulating the auction and forgiving his own loan balance; that Hodge was unjustly enriched by forgiving his loan balance; and that Source 2 was unjustly enriched by receiving certain Source 1 assets without payment." *Id.*, at pp. 20-22. As such, Plaintiffs are entitled to an award of attorney fees incurred in this litigation to prosecute such derivative claims.

E. Plaintiffs Are Entitled To An Award Of Attorney Fees Pursuant To Idaho Code § 12-121.

As an alternative to the foregoing statutory grounds for an award of attorney fees, the Plaintiffs request an award of fees pursuant to Idaho Code Section 12-121. Such an award is appropriate when "the court, in its discretion, is left with the abiding belief that the case was brought, pursued or defended frivolously, unreasonably, or without foundation." *Mannos v. Moss*, 143 Idaho 927, 937, 155 P.3d 1166, 1176 (2007). In this case, an award pursuant to Section 12-121 is appropriate in light of the fact that Hodge's misconduct relative to the dissolution of Source 1 only intensified as a result of the lawsuit. Not only were his defenses to the Plaintiffs' claims without merit, but as a result of the Plaintiffs' assertion of such claims, Hodge unreasonably took further punitive action against Source 1's minority membership, and took actions to unjustly enrich his new venture, Source 2. A significant portion of the damages resulted after the initiation of this lawsuit and, equally important, after entry of the Dissolution Order. Hodge's blatant disregard for the Dissolution Order, and his explanations and defenses for such disregard, on behalf of himself and Source 2, are unreasonable and without foundation. Attorney fees are, therefore, also warranted pursuant to Section 12-121.

F. Plaintiffs' Attorney Fees Are Reasonable.

The factors to be considered by the Court in determining the reasonableness of attorney fees to be awarded in a civil action are listed in Idaho Rule of Civil Procedure 54(e)(3).

A review of these factors, when applied to the case at bar, warrants an award of attorney fees in the amount of $250,246.82. Plaintiffs brought various legal and equitable claims for relief against Source 1, Source 2 and Hodge, including breach of contract, breach of fiduciary duty, and unjust enrichment.[5] Roe Affidavit, ¶ 5. This litigation presented complex legal issues and factual scenarios resulting in the Plaintiffs incurring significant fees and costs to prosecute their claims. *Id.* Hodge's continued conduct caused Plaintiffs to file an application for a temporary restraining order and preliminary injunction, as well as an amended complaint to present additional facts and claims associated with Hodge's auction misconduct. *Id.*

All the while, counsel for Plaintiffs endeavored to act as efficiently as possible throughout the prosecution of this matter. Plaintiffs limited discovery when possible, despite Defendants' efforts to thwart Plaintiffs' attempts at efficiency. Roe Affidavit, ¶¶ 6-7. At every turn, Hodge, Source 1 and Source 2 made the gathering of the business and financial information of Source 1 and Source 2 as inconvenient and inefficient as possible. *See id.* Plaintiffs chose not to hire a responding expert in a further effort to save costs and fees. Roe Affidavit, ¶ 7. As discovery closed, Plaintiffs appropriately narrowed their claims and prepared for and proceeded to trial on only such claims. Roe Affidavit, ¶ 8. In the end, the Plaintiffs prevailed on multiple causes of action, including Hodge's breach of the Operating Agreement as a result of numerous violations thereof, Hodge's breach of fiduciary duty, and the unjust enrichment of Hodge and Source 2, they successfully prosecuted derivative claims on behalf of Source 1, and the Court awarded damages. *Id.*

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[5] As noted above, Plaintiffs' initially sued Brown and Claiborne as well, but they were dismissed as parties to the litigation prior to trial.

As set forth in the great detail in Roe Affidavit, Plaintiffs' legal team is experienced in commercial litigation, including cases involving shareholder disputes, and its lead counsel selected the individuals who performed each task with a view to cost effective legal representation. Roe Affidavit, ¶ 12. When appropriate, lead counsel utilized the services of an associate and a veteran paralegal, both of whom bill at rates far less than lead counsel. *Id.* Effort was taken by counsel to minimize the duplication of efforts by the legal team.[6] Roe Affidavit, ¶ 14. Upon information and belief, the rates charged by Moffatt, Thomas, Barrett, Rock & Fields, Chartered in this matter are substantially less than other litigation attorneys and paralegals in Idaho with similar experience in commercial litigation. Roe Affidavit, ¶ 13.

As set forth above and in the Roe Affidavit, the fees sought in prosecuting Plaintiffs claims against Defendants were reasonable and necessary, and the Roe Affidavit supplies more than an adequate basis for the Court to award attorney fees using the factors set forth in Rule 54(e)(3).

V.
CONCLUSION

As demonstrated above, Plaintiffs are the prevailing parties in this case. The gravamen of this matter involves multiple claims relative to Hodge's numerous breaches of the Operating Agreement, which governs the operation and dissolution of the subject promotional products company. The plain language of Idaho Code Section 12-120(3) therefore mandates an award of reasonable costs and attorney fees from Hodge to Plaintiffs. Additionally, Plaintiffs are

[6] Additionally, while other attorneys and paralegals within Moffatt Thomas worked on this case from time to time, Plaintiffs have chosen not to include the total amount of $3,321.50 attributable to such timekeepers in this Memorandum of Fees and Costs, as such timekeepers did not comprise the primary litigation team. Roe Affidavit, ¶ 14.

allowed to recover reasonable attorney fees and costs relative to their derivative claims against Source 2 and Hodge pursuant to Idaho Code § 30-6-906(2). Finally, an award of fees pursuant to Idaho Code Section 12-121 is also warranted under the circumstances because Hodge and Source 2's defenses relative to their respective conduct during the dissolution of Source 1 were without foundation, and equally important, such conduct very clearly violated the Dissolution Order entered by this Court on May 17, 2012.

Therefore, an award of costs as a matter of right in the amount of $5,507.40, discretionary costs of $3,062.05, and attorney fees in the amount of $250,014.32, for a total amount of **$258,583.77**, is reasonable and warranted under the circumstances.

DATED this 5th day of March, 2014.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2014, I caused a true and correct copy of the foregoing **PLAINTIFFS' MEMORANDUM OF ATTORNEYS FEES AND COSTS** to be served by the method indicated below, and addressed to the following:

E. Don Copple
Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendants

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

Michael O. Roe

Michael O. Roe, ISB No. 4490
Matthew J. McGee, ISB No. 7979
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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

AFFIDAVIT OF MICHAEL O. ROE IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

MICHAEL O. ROE, having been duly sworn upon oath, deposes and states as follows:

ORIGINAL

1. I am one of the attorneys of record for Plaintiffs Donnelly Prehn and Dwight Bandak (the "Plaintiffs"), a shareholder in the law firm of Moffatt, Thomas, Barrett, Rock & Fields, Chartered ("Moffatt Thomas"), have access to my client's files, and make this affidavit based upon my personal knowledge. This Affidavit is submitted in accordance with Rules 54(d)(1), 54(e)(1), 54(e)(3), and 54(e)(5) of the Idaho Rules of Civil Procedure.

2. I am personally aware of the legal services rendered in this action and the amount of time expended by attorneys and paralegals of Moffatt Thomas in the prosecution of Plaintiffs' claims against The Source Store, LLC ("Source 1"), The Source, LLC ("Source 2"), and Michael L. Hodge, II ("Hodge").[1]

3. Attached hereto as **Exhibit A** is a true and correct copy of the Operating Agreement of The Source Store, LLC ("Source 1's Operating Agreement"), which was admitted into evidence at the trial of this matter as Plaintiffs' Exhibit No. 1.

4. Between March 2012 and February 2014, exclusive of this Affidavit and Plaintiffs' Memorandum of Attorney Fees and Costs filed concurrently herewith, attorneys and paralegals of Moffatt Thomas have performed legal services for Plaintiffs in connection with the above-referenced litigation.[2]

5. Counsel for Plaintiffs endeavored to act as efficiently as possible throughout the prosecution of this matter. Plaintiffs initially pursued various claims for relief

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[1] In addition, Plaintiffs initially sued defendants George Michael Brown ("Brown") and Christopher Claiborne ("Claiborne") as well, but they were dismissed as parties to the litigation prior to trial.

[2] Although Moffatt Thomas began performing legal work for Plaintiffs prior to March 2012, Plaintiffs have excluded from their Memorandum of Attorney Fees and Costs and this Affidavit all time entries prior to Plaintiffs' initiation of this lawsuit.

against Defendants, including breach of contract, breach of fiduciary duty, and unjust enrichment, and this litigation presented complex legal and equitable issues and factual scenarios resulting in the Plaintiffs incurring significant fees and costs to prosecute their claims. Due to the conduct of Hodge around the time of the filing of Plaintiffs' initial complaint, Plaintiffs filed an application for a temporary restraining order and preliminary injunction, resulting in the issuance of an order governing the dissolution of Source 1 and ordering an auction of Source 1's assets. Furthermore, given Hodge's continuing obstruction and misconduct even after negotiating such an order and before, during, and after the auction of Source 1's assets, Plaintiffs amended their complaint to present additional facts and allege additional causes of action.

6. Counsel did not propound any unnecessary written discovery. However, and as the record before this Court demonstrates, Plaintiffs' efforts to minimize fees and costs were thwarted by Source 1, Source 2 and Hodge during the discovery phase of the case. For example, Source 2 initially refused to provide records responsive to the majority of Plaintiffs' discovery requests, causing Plaintiffs to file a motion to compel.[3] Additionally, rather than undertake a sincere effort to locate documents responsive to Plaintiffs' discovery requests, Source 1 instead made available approximately 10 years' worth of unorganized and shoddily kept business records and its server[4] for inspection and copying at Plaintiffs' expense. As a result, Plaintiffs were forced to expend significant funds to have a paralegal spend three (3) days sifting through boxes and file cabinets of hard-copy records for responsive documents. Plaintiffs

[3] As the Court previously awarded fees to Plaintiffs resulting from their motion to compel against Source 2, Plaintiffs have excluded all time entries sought under their Rule 37 Memorandum of Fees and Costs (December 4, 2013).

[4] During this process, Plaintiffs discovered that the bulk of Source 1's financial records (via the Profit Maker software) and emails were housed on its server.

expended additional funds to hire a computer forensic technician to image Source 1's server, also resulting in significant time for Plaintiffs' counsel to sift through the 650 gigabytes of data retrieved therefrom.[5] These efforts were set forth in detail in the November 28, 2013 Affidavit of Matthew J. McGee and Affidavit of Tiffiny Hudak in support of Plaintiffs' motion to compel against Source 1, and for the sake of brevity, will not be repeated here.

7. Plaintiffs took four (4) discovery depositions (the 30(b)(6) depositions of Source 1 and Source 2, and fact depositions of Hodge and Brown). In the end, Plaintiffs decided against deposing other fact witnesses, including Claiborne, employees of Source 1 and Source 2, and Chris Halstead and other employees of Source 1's largest customer BodyBuilding.com. Additionally, Plaintiffs chose not to hire a responsive expert and not to depose the Defendants' accounting expert, Peter Butler, in a further effort to minimize fees and costs.

8. As discovery closed, Plaintiffs appropriately narrowed their claims and prepared for and proceeded to trial on the remaining claims. Trial lasted four (4) days, between December 2 and December 6, 2013. In the end, the Plaintiffs prevailed on multiple causes of action, successfully prosecuted derivative claims on behalf of Source 1, and the Court awarded damages.

9. To establish the outstanding amounts due and owing from a particular client, timekeepers at Moffatt Thomas prepare time slips describing the particular legal services performed, together with the particular date such legal services were rendered, as well as

[5] To put it in perspective, one gigabyte of data is the equivalent of approximately 75,000 pages of documents. Exponentially, 650 gigs would equal approximately 48,750,000 pages of documents.

designating the amount of time spent on the particular matter. The time slips are filed electronically for each client and at the end of a 30-day billing cycle, the time is totaled, and then multiplied by the applicable hourly rate in order to generate an invoice for legal services rendered. Also included in the invoice is the sum of costs and expenses advanced by Moffatt Thomas through the end of the particular billing cycle on behalf of the client.

10. The amount of costs and attorney fees incurred during the litigation and that Plaintiffs request be awarded by this Court are as follows: **$5,507.40** in costs as a matter of right pursuant to I.R.C.P. 54(d)(1)(C); **$3,062.05** in discretionary costs pursuant to I.R.C.P. 54(d)(1)(D); and attorney fees of **$250,014.32**[6] pursuant to I.R.C.P. 54(e)(1), Idaho Code §§ 12-120(3), 12-121, and 30-6-906(2), and Source 1's Operating Agreement, for a total of costs and fees in the amount of **$258,583.77**.

11. The computed sums for costs and attorney fees are set forth in the Plaintiffs' Memorandum of Attorney Fees and Costs and itemized in the matter history report attached hereto as **Exhibit B**.[7] This report shows time entries which appear on the billing statements sent to Plaintiffs, and the entries are identical in all material respects to the time

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[6] During the course of this litigation, Moffatt Thomas provided courtesy discounts to Plaintiffs in the total amount of $3,543.68. Therefore, Plaintiffs have deducted this amount from the total fees sought. In addition, as noted above, Plaintiffs have removed from this Memorandum of Fees and Costs all time entries sought under their Rule 37 Memorandum of Fees and Costs (December 4, 2013), as the Court has previously awarded fees on that issue. Moreover, Plaintiffs have not sought recovery of the attorney fees of other Moffatt Thomas timekeepers who expended effort on Plaintiffs' behalf but did not comprise the core legal team, in the total amount of $3,321.50; therefore, such time entries were removed from the calculation of total attorney fees.

[7] By submitting the matter history report to the Court, the Plaintiffs do not, nor do they intend to, waive the attorney-client or work product privileges in any respect.

entries on the actual billing statements.[8] The attorney fees set forth in the matter history report were incurred between March 12, 2012 and February 4, 2014, exclusive of fees relative to this Affidavit and accompanying Plaintiffs' Memorandum of Attorney Fees and Costs, and were reasonable and necessary given the scope and complexity of the claims advanced by Plaintiffs. To the best of my knowledge and belief, all of the remaining fees set forth on **Exhibit B** were necessary and reasonably incurred in good faith in bringing Plaintiffs' claims against the Defendants.

12. Plaintiffs' legal team is experienced in commercial litigation, including cases involving shareholder disputes, and the undersigned lead counsel selected the individuals who performed each task with a view to cost effective legal representation. With nearly 25 years of experience, the undersigned took further steps to minimize attorney fees incurred in this matter. Standard billing rates for the attorneys were substantially reduced, resulting in the following hourly rates: $225/hr for Michael O. Roe (partner) and $155/hr for Matthew J. McGee, an associate who has been practicing for 5 years. Further, lead counsel utilized the services of one of Moffatt Thomas's senior paralegals, Tiffiny Hudak, who has over 20 years of experience, and whose billing rate of $100/hr is not only reduced from her standard billing rate, but is significantly lower than the billable rates of the attorneys.

13. Upon information and belief, these hourly rates are well within the range charged by other partners, associate attorneys and paralegals in Idaho with equal experience. Upon further information and belief, the rates charged by other litigation attorneys in Idaho with 25 years' experience, and with respect to commercial cases such as this one, range from $225 to

[8] The matter history report is submitted in place of copies of the actual billing statements to reduce the amount of pages actually filed with the Court.

$395 per hour. Similarly, the hourly rates charged by other litigation firms for associate attorneys in Idaho for commercial cases such as this one, is approximately $150 to $295 per hour. Finally, the rates for paralegals in commercial cases range from $95 to $190 per hour.

14. Effort was taken by the undersigned to minimize the duplication of efforts by the legal team. In addition, as noted above, other Moffatt Thomas timekeepers periodically performed legal services on behalf of Plaintiffs, for a total amount of $3,321.50. However, given that such timekeepers did not comprise the core litigation team, Plaintiffs have not included such time in their request for an award of attorney fees.

15. As with attorney fees, the computed sums for costs incurred in the defense of this matter are also set forth in **Exhibit B**, representing costs actually paid directly by Moffatt Thomas.

16. These costs include court filing fees, service of process of several deposition and trial subpoenas, witness fees, witness travel fees, trial exhibits, and the cost of the four depositions taken by Plaintiffs, all of which are deemed costs as a matter of right pursuant to I.R.C.P. 54(d)(1)(C). All such costs as a matter of right have been actually paid in accordance with I.R.C.P. 54(d)(1)(C).

17. In addition, **Exhibit B** also identifies necessary and exceptional discretionary costs contemplated by I.R.C.P. 54(d)(1)(D), as follows: Westlaw online research, certain costs related to written discovery (as explained below), one-half the cost of the parties' mediation fee, and trial exhibits in excess of $500. Plaintiffs are not seeking recovery of certain routine service fees, such as messenger delivery fees, in-house copy charges, telephone charges, and postage fees, as they recognize that such charges are a necessary part of doing business, but not exceptional as required under Rule 54(d)(1)(D).

18. During the discovery phase of this case, Plaintiffs incurred additional necessary and exceptional expenses. First, counsel Plaintiffs hired a computer forensics technician to image Source 1's server, which took approximately 6 hours. In addition, the computer forensics technician spent considerable time processing the harvested data into a format which could be reviewed by Plaintiffs' counsel, for a total cost of $850.

19. Next, as counsel for Plaintiffs reviewed and marked for copying portions of Source 1's hard copy records offered up for inspection, Plaintiffs incurred the necessary and exceptional expense of having an imaging vendor scan and produce to all counsel copies of the approximately 3,000 pages of selected records, at a total cost of $670.64.

20. Finally, Plaintiffs paid $140.40 to the Court Reporter, who transcribed the four depositions taken by Plaintiffs, for the scanning, copying, and dissemination to all counsel of the 122 deposition exhibits. Many of these deposition exhibits were later selected and used as trial exhibits. Therefore, such costs were necessary and exceptional.

Further your affiant sayeth naught.

Michael O. Roe

SUBSCRIBED AND SWORN to before me this 5th day of March, 2014.

CIARRAN BURCH
NOTARY PUBLIC
STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at Boise ID
My Commission Expires 4/9/19

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March, 2014, I caused a true and correct copy of the foregoing **AFFIDAVIT OF MICHAEL O. ROE IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS** to be served by the method indicated below, and addressed to the following:

E. Don Copple
Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
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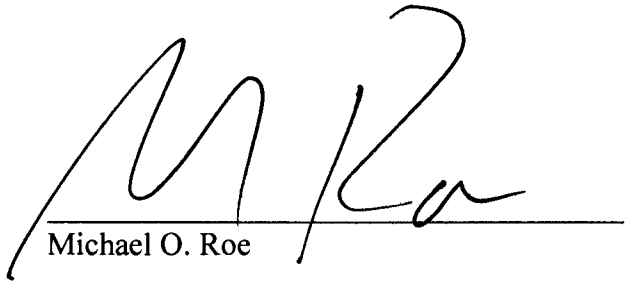
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile



Michael O. Roe

EXHIBIT A

TO

Affidavit of Michael O. Roe in Support of Plaintiffs' Memorandum of Attorney Fees and Costs

OPERATING AGREEMENT
OF
THE SOURCE STORE, LLC

This Operating Agreement of THE SOURCE STORE, LLC, an Idaho limited liability company, is made and entered into as of the 1st day of April, 2003, by and between Michael L. Hodge II ("Hodge") and Donnelly Prehn ("Prehn") (Hodge and Prehn are sometimes referred to in this Operating Agreement as the "Initial Members"), and such other Persons who may execute this Agreement from time to time as Members.

RECITALS:

A. The Members desire to form the Company as an Idaho limited liability company pursuant to the terms and conditions of this Agreement, and the Idaho Limited Liability Act, Idaho Code §§ 53-601 *et seq.*

B. The parties hereto desire to provide for the governance of the Company and to set forth in detail the Members' respective rights and duties to the Company.

C. The Members executing this Agreement, or a counterpart hereof, agree to the terms and conditions of this Agreement, as it may from time to time be amended according to its terms.

D. Capitalized terms used herein shall have the meanings given such terms in *Article 18* of this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 - ORGANIZATION

1.1 **Formation.** The Company has been formed as a limited liability company pursuant to the Act by filing Articles of Organization described in Section 53-608 of the Act (the "Articles") with the Secretary of State of the State of Idaho (the "Secretary of State") in conformity with the Act. The Company and, if required, each of the Members shall execute or cause to be executed from time to time all other instruments, certificates, notices and documents and shall do or cause to be done all such acts and things (including keeping books and records and making publications or periodic filings) as may now or hereafter be required for the formation, valid existence and, when appropriate, termination of the Company as a limited liability company under the laws of the State of Idaho.

1.2 **Company Name.** The name of the Company is THE SOURCE STORE, LLC, and all business of the Company shall be conducted under that name or under any other name or variations thereof as the Manager may determine, but in any case, only to the extent permitted by applicable law. The Members agree that the Company shall file *d/b/a* applications in appropriate states, including Idaho, to operate under the name "The Source."

1.3 **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and that location reflected in the Articles as filed in the office of the Secretary of State. The Manager may, from time to time, change the registered agent or office through appropriate filings with the Secretary of State. If the registered agent ceases to act as such for any reason or the registered office shall change, the Manager shall promptly designate a replacement registered agent or file a Notice of change of address as the case may be. If the Manager shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.

1.4 **Principal Office.** The Principal Office of the Company shall be located at such place as the Members may designate, which need not be in the State of Idaho, and the Company shall maintain its records there. The Company may have such other offices as the Members may designate from time to time.

1.5 **Foreign Qualification.** Each Member agrees to execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue or terminate the Company as a foreign limited liability company in all jurisdictions in which the nature of the business conducted by the Company or the ownership or leasing of property by the Company may require such qualification.

1.6 **Term.** The term of this Agreement (the "Term") shall end, if not sooner terminated in accordance with the provisions hereof, on December 31, 2040.

1.1 **No State-Law Partnership.** The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the Idaho Uniform Partnership Act or the Idaho Uniform Limited Partnership Act. The Members do not intend to be partners or joint venturers to each other, or as to any third party, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise. To the extent that the Manager or any Member, by word or action, represents to another Person that any other Member is a partner or joint venturer with such Member or Manager, or that the Company is a partnership or joint venture, the Manager or Member making such wrongful representation shall be liable to all other Member(s) and Manager(s) who incur personal liability by reason of such misrepresentation.

ARTICLE 2 - PURPOSE AND NATURE OF BUSINESS

2.1 **Purpose; Power and Authority.** The Company is being formed to: (a) sell, market and distribute corporate promotional products; and (b) engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company shall have all powers provided for in the Act and the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this *Article 2* and elsewhere in this Agreement. The Company exists only for the purpose specified in this *Article 2*, and may not conduct any other business without the approval of 51% or more of the Member Interest in the Company. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by law to a limited liability company organized under the laws of the State of Idaho.

2.2 **Company Property.** No real, personal or other Property of the Company shall be deemed to be owned by any Member individually, but shall be owned by and title shall be vested solely in the Company. Without limiting the foregoing, all trade secrets, intellectual property, and other business assets used or developed by the Company are owned and controlled exclusively by, and in the sole discretion of, the Company. The Membership Interests of the Members in the Company, as represented by the Membership Share Certificates, shall constitute their own personal property.

2.3 **Non Compete Agreements.** Concurrently with the execution and delivery of this Agreement, each of the Initial Members shall sign and deliver a Non-Compete Agreement, substantially in the form attached hereto as Exhibit A, pursuant to which each of the Initial Members shall agree not to solicit customers of the Company for a competing business for a period of two (2) years following his termination of employment with and/or ownership of the Company.

2.4 **Time Devoted to Business.** It is understood and agreed by the Initial Members that Hodge shall devote his full-time efforts to the business of the Company. It is further understood and agreed by the Initial Members that Prehn shall devote his time to the Company on a part-time basis, and that his duties shall be split between the Company and Boise Capital Group, with the majority of his time spent on Company business.

2.5 **Facilities Provided to Prehn.** During the term of his association with the Company, the Company will provide Prehn with an office at the Company's principal place of business and access to phone, fax and copier equipment; *provided, however*, that any incremental charges, excluding rent or time spent on Company business, will be reimbursed to the Company by Prehn. It is understood and agreed by the Initial Members that Prehn will conduct business activities at this location on behalf of both the Company and Boise Capital Group.

ARTICLE 3 - ACCOUNTING AND RECORDS; TAX MATTERS

3.1 **Records to be Maintained.** At the expense of the Company, the Manager shall maintain or cause to be maintained reasonable books, records and accounts of all operations and expenditures of the Company. At a minimum, the Manager shall keep or cause to be kept the following records at the Company's Principal Office in accordance with Section 53-625 of the Act:

(a) A current list, setting forth the full name and last known mailing address of each current and former Manager and each current and former Member and Assignee, in alphabetical order;

(b) A copy of the Articles and all amendments thereto, together with executed copies of any powers of attorney pursuant to which Articles of Amendment have been executed;

(c) Copies of the Company's federal, foreign, state and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared for any reason, copies of the information and statements provided to, or which should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for the period;

(d) Copies of this Agreement, including all amendments hereto, and copies of any written operating agreements no longer in effect;

(e) Minutes of every meeting of the Members and/or Manager(s) and any written consents obtained from Members and/or Manager(s) for actions taken without a meeting; and

(f) Any other books and records required to be maintained by the Act.

3.2 **Access to Books and Records.** All Members shall have the right at all reasonable times during usual business hours to examine, and make copies of or extracts from, the books of account of the Company and the records required to be maintained hereunder. Such right may be exercised through any Representative of such Member designated by it. Each Member shall bear all expenses incurred in any such examination made for such Member's account. Any information obtained and copied pursuant to operation of this *Section 3.2* shall be kept and maintained in strictest confidence in accordance with the provisions of *Article 17* hereof.

3.3 **Financial and Tax Reporting Principles.**

(a) **Accounting Principles.** The Company's books and records shall be kept, and its income tax returns and financial statements prepared, under such permissible method of accounting, consistently applied, as a Majority Vote of Membership Shares determines is in the best interest of the Company and its Members, except that the financial statements and records shall be kept consistent with GAAP.

(b) **Taxable Year.** The taxable year of the Company shall be its Fiscal Year.

3.4 **Annual Reports to Current Members.** To the extent reasonably practicable, the Manager shall prepare and mail to each current Member, or shall cause to be prepared and mailed to each current Member, within ninety (90) days of the end of each Fiscal Year, a financial report setting forth the following: (i) a balance sheet of

the Company as of the close of such Fiscal Year; (ii) a statement showing the Net Profit or Net Loss of the Company for such Fiscal Year in reasonable detail; and (iii) a statement indicating changes in the aggregate Capital Account balances of the Members for such Fiscal Year. Each Member shall receive for approval a copy of the annual budget of the Company (the "Annual Budget"), consisting of an operating budget, a capital expenditure budget and a cash usage plan for the Company, for each Fiscal Year of the Company no later than fifteen (15) days prior to the commencement of such Fiscal Year. Each Annual Budget shall be approved by a Majority Vote of Membership Shares.

3.5 **Tax Information for Current and Former Members and Assignees.** To the extent reasonably practicable, within ninety (90) days after the end of each Fiscal Year, the Manager shall prepare and mail (or cause to be prepared and mailed) to each current Member and Assignee and, to the extent necessary, to each former Member and Assignee (or such Member's or Assignee's legal representatives), a report setting forth in sufficient detail such information as shall enable such Person to prepare its federal, state and local income tax returns in accordance with the laws, rules and regulations then prevailing. The Company shall also provide Form K-1s to Members and Assignees as soon as practicable after the end of each Fiscal Year.

3.6 **Indemnification Reporting.** In the event the Company indemnifies or advances expenses to a Member, Manager or Officer in connection with a Proceeding as provided in *Article 15* hereof, the Company shall promptly report the indemnification or advance in writing to the Members.

3.7 **Filing of Tax Returns.** The Tax Matters Partner (as defined in *Section 3.8* below) shall prepare and file, or cause to be prepared and filed, a federal information tax return and any required state and local income tax and information returns for each tax year of the Company. The Tax Matters Partner has sole and absolute discretion as to whether or not to prepare and file (or cause to be prepared and filed) composite, group or similar state, local and foreign tax returns on behalf of the Members and Assignees where and to the extent permissible under applicable law. Each Member and Assignee hereby agrees to execute any relevant documents (including a power of attorney authorizing such a filing), to furnish any relevant information and otherwise to do anything necessary in order to facilitate any such composite, group or similar filing. Any taxes paid by the Company in connection with any such composite, group or similar filing shall be treated as an advance to the relevant Members and Assignees (with interest being charged thereon) and shall be recouped by the Company out of any Distributions subsequently made to such relevant Members and Assignees. Such advances may be funded by Company borrowings. Both the deduction for interest payable by the Company with respect to any such borrowings, and the corresponding income from interest received by the Company from the relevant Members and Assignees, shall be specifically allocated to such Members and Assignees.

3.8 **Tax Matters Partner.** The tax matters partner of the Company (the "Tax Matters Partner") as provided in section 6231(a)(7) of the Code, is hereby designated as Michael L. Hodge II. A Majority Vote of Membership Shares may change the identity of the Tax Matters Partner from time to time by resolution. Each Person (for purposes of this provision a "Pass-Thru Partner") that holds or controls a Membership Interest on behalf of, or for the benefit of another Person or Persons, or which Pass-Thru Partner is beneficially owned (directly or indirectly) by another Person or Persons, shall, within thirty (30) days following receipt from the Tax Matters Partner of a Notice or document, convey such Notice or other document in writing to all holders of beneficial interests in the Company holding such Membership Interest through such Pass-Thru Partner. In the event the Company shall be the subject of an income tax audit by any federal, state or local authority, to the extent the Company is treated as an entity for purposes of such audit, including administrative settlement and judicial review, the Tax Matters Partner shall be authorized to act for, and its decision shall be final and binding upon, the Company and each Member and Assignee. All expenses incurred in connection with any such audit, investigation, settlement or review shall be borne by the Company.

3.9 **Expenses of Tax Matters Partner; Indemnification.** The Company shall indemnify and reimburse the Tax Matters Partner for all reasonable expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members attributable to the Company. The payment of all such expenses shall be made

before any Distributions are made to Members (and such expenses shall be taken into consideration for purposes of determining Net Cash from Operations) or any discretionary Reserves are set aside. Neither the Tax Matters Partner nor any Member shall have any obligation to provide funds for such purpose. The provisions for exculpation and indemnification set forth in *Article 15* of this Agreement shall be fully applicable to the Tax Matters Partner for the Company.

3.10 **Tax Elections.**

(a) **Elections.** The Tax Matters Partner shall make the following elections on the appropriate tax returns:

(i) To adopt the Company's Fiscal Year in accordance with the Code and applicable Regulations;

(ii) To adopt an appropriate method of accounting and to keep the Company's books and records on that method; and

(iii) Any other election the Manager deems appropriate and in the best interests of the Company and the Members, including, without limitation, an election under section 754 of the Code.

(b) **Intent of Parties.** It is the intent of the parties to this Agreement that the Company be treated as a partnership for United States federal income tax purposes and, to the extent permitted by applicable law, for state and local franchise and income tax purposes. Neither the Company, the Manager, the Tax Matters Partner nor any Member may make any election for the Company to be excluded from the application of the provisions of Subchapter K of Subtitle A of the Code or any other provisions of applicable state or local law, and no provision of this Agreement shall be construed to sanction or approve such an election.

3.11 **Withholding.** With respect to any Member or Assignee who is not a United States Person within the meaning of the Code, any tax required to be withheld under section 1446 or other provisions of the Code, or under state law, shall, unless already reflected in an appropriate charge to the Capital Account of the Member or Assignee, be charged to such Member's or Assignee's Capital Account as if the amount of such tax had been distributed to such Member or Assignee. The amount so withheld shall be treated as a distribution of Net Cash from Operations to such Member or Assignee for all purposes of this Agreement.

ARTICLE 4 - MEMBERSHIP

4.1 **Registry of Members.** Attached as **Schedule 1** hereto is a registry of the names of the Members, together with their addresses, their Sharing Ratios in, and their Capital Contributions to, the Company, as well as the number of Membership Shares owned by each Member. The Manager shall cause to be made all appropriate entries on and shall periodically amend **Schedule 1** to reflect accurately the membership in the Company, and all relevant information concerning the ownership of Membership Shares during the term of this Agreement. Similar information with respect to Assignees shall be included on **Schedule 1** from time to time as appropriate.

4.2 **Representations and Warranties of Members.** By the due execution and delivery of this Agreement, or a counterpart signature page hereof, each Member represents and warrants to the Company, the Manager and to each other Member that:

(a) **Due Authority.** The Member has all necessary corporate, partnership, limited liability company, trust or other applicable power and authority to enter into this Agreement and to perform its obligations hereunder, and all necessary actions by its board of directors, shareholders, partners, members, managers, trustees, beneficiaries, or other Persons necessary for the due authorization, execution, delivery and performance of this Agreement by the Member have been duly taken.

(b) **Due Execution.** The Member has duly executed and delivered this Agreement or has caused its duly authorized officer or agent to execute and deliver this Agreement.

(c) **Non-Contravention.** The Member's authorization, execution, delivery and performance of this Agreement do not conflict with the charter or organizational documents of the Member or with any other agreement or arrangement to which the Member is a party or by which it, or its assets or properties, is bound.

(d) **Purchase Entirely for Own Account; Knowledge.** The Member (i) is acquiring its Membership Shares exclusively for the Member's own account, for investment purposes only and not with a view to or for the resale, distribution, subdivision or fractionalization thereof, and the Member has no contract, understanding, undertaking, agreement or arrangement of any kind with any Person to sell, transfer or pledge to any such Person its Membership Shares or portion thereof, nor does the Member have any plans to enter into any such contract, understanding, undertaking, agreement or arrangement; (ii) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company and has obtained, in such Member's judgment, sufficient information regarding the Company and its business and prospects to evaluate the merits and risks of its investment; (iii) in making its decision to acquire Membership Shares, the Member has been advised by its own business, tax and legal advisors and is not relying on the Company or the Manager or on any other Members with respect to the business, tax or legal considerations involved in such investment; and (iv) is able to bear the economic risk of an investment in Membership Shares for an indefinite period of time. The Member has been furnished access to such information and documents as it has requested and has been afforded an opportunity to ask questions of, and receive answers from, Representatives of the Company concerning the terms and conditions of this Agreement and the acquisition of Membership Shares.

ARTICLE 5 - MEMBERSHIP SHARES; CAPITALIZATION

5.1 Common Membership Shares. All Membership Interests of the Members in the Company shall be denominated in Membership Shares and set forth on the Member Registry attached as **Schedule 1** hereto. The Member Registry shall be amended from time to time as required to reflect issuances of additional Membership Shares to new Members, changes in the number of Membership Shares held by the Members, and to reflect the addition, substitution or dissociation of Members. The number of Membership Shares held by a Member shall not be affected by any (i) issuance by the Company of additional Membership Shares to other Members or (ii) a change in the Capital Account of such Member (other than such changes as are required to reflect additional Capital Contributions from such Member in exchange for the issuance of new Membership Shares).

5.2 Capitalization. The Company is authorized to issue up to Two Hundred Thousand (200,000) Membership Shares, designated "Common Membership Shares," the number of which Shares may be changed in the future with the approval of a Majority Vote of Membership Shares. With the approval of the Majority Vote of Membership Shares, the Company may issue Common Membership Shares as follows: (i) in connection with the admission of Additional Members in accordance with the provisions of *Section 13.2*; (ii) as the Members deem advisable to secure and retain the services of new key employees, consultants or independent contractors, and to provide incentives for such Persons to exert maximum efforts for the success of the Company; and (iii) to raise outside capital for the Company's business. The Company, with the approval of a Majority Vote of Membership Shares, is authorized to issue options or warrants to purchase Common Membership Shares, restricted Common Membership Shares (subject to vesting and repurchase rights in favor of the Company), and other securities convertible, exchangeable or exercisable for Common Membership Shares, on such terms as may be determined by the Majority Vote of Membership Shares.

5.3 Changes to Capital Structure. Subject to the terms of this Agreement, the terms of admission or issuance may provide for the creation of different classes, groups or series of Membership Shares having different rights, powers, preferences, restrictions and duties as determined by the Majority Vote of Membership Shares. Any creation of any new class, group or series of Membership Shares shall be reflected in an amendment to this Agreement indicating such rights, powers, preferences, restrictions and duties.

5.4 Membership Share Certificates. Membership Shares shall be represented by a certificate of membership (the "Membership Share Certificates"). The exact contents of a Membership Share Certificate shall be determined by action of the Members but shall be issued substantially in conformity with the requirements set forth herein. The Membership Share Certificates shall be numbered serially, as they are issued, shall be impressed with the Company's seal or a facsimile thereof, if any, and shall be signed by the Manager or duly authorized Members of the Company. Each Membership Share Certificate shall state the name of the Company, the fact that it is organized under the laws of the State of Idaho as a limited liability company, the name of the Person to whom issued, the date of issuance and the class of Membership Shares it represents. All Membership Share Certificates surrendered to the Company for Transfer shall be canceled and no new Membership Share Certificates shall be issued until the former Membership Share Certificate of like number and tenor shall have been surrendered and canceled; *provided, however*, in the case of a lost, destroyed or mutilated Membership Share Certificate, a new Certificate may be issued therefor on such terms and indemnity to the Company as the Members may prescribe.

5.5 Legend. Each Membership Share Certificate shall bear the following legend:

"THE LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO, AND MAY NOT BE TRANSFERRED, SOLD, ASSIGNED, PLEDGED, ENCUMBERED, HYPOTHECATED OR OTHERWISE DISPOSED OF WITHOUT COMPLYING WITH THE PROVISIONS OF THE OPERATING AGREEMENT (THE "AGREEMENT") BY AND AMONG THE MEMBERS OF **THE SOURCE STORE, LLC** , AS IT MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH IS ON FILE WITH THE COMPANY. IN ADDITION TO THE RESTRICTIONS ON TRANSFER SET FORTH IN SUCH AGREEMENT, NO TRANSFER OF THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE MAY BE MADE (A) EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE RULES AND REGULATIONS IN EFFECT THEREUNDER (THE "1933 ACT"), AND ALL APPLICABLE STATE SECURITIES LAWS OR (B) UNLESS SUCH TRANSFER IS PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE 1933 ACT. THE HOLDER OF THIS CERTIFICATE BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE TERMS AND PROVISIONS OF THE AFORESAID AGREEMENT."

5.8 Voting of Membership Shares. The rights, privileges and powers, including voting powers, of each Common Membership Share shall be identical, with each Common Membership Share being entitled to one vote on all matters with respect to which the Members are entitled to vote as provided in this Agreement; *provided, however*, that Membership Shares which represent only Economic Rights of an Assignee who is the beneficial owner of such Membership Shares (but who has not been admitted as a Substitute Member of the Company) shall not be voted.

5.9 Redemption of Membership Shares. No Member shall have any right to require the redemption by the Company of any Membership Shares.

5.10 Federal and State Securities Laws. Each Member hereby acknowledges that the Membership Shares have not been registered under the 1933 Act, and have not been registered or qualified under the securities laws of any state or foreign jurisdiction, inasmuch as they are being acquired in a transaction not involving a public offering. As a result, the Members each acknowledge their understanding that an investment in Membership Shares is of a long-term nature and that the Membership Shares may not be resold or transferred by any Member without appropriate registration or the availability of an exemption from such requirements.

ARTICLE 6 -- MANAGER; RIGHTS AND DUTIES

6.1 Initial Manager. The Manager shall have the sole and exclusive right and power to manage the business of the Company, and shall have all of the rights and powers that may be possessed by managers under the Act, including without limitation those rights and powers described in this *Article 6*. The initial Manager of the Company shall be Michael L. Hodge II.

6.2 **Management Authority.** The Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

6.3 **Officers.** The Manager may appoint himself or other individuals as officers of the Company ("Officers"), which may include, but shall not be limited to or be required to include the following: a Chief Executive Officer, President, Vice President, Secretary, and such other officers as the Manager shall determine from time to time. The Manager may delegate a portion of his day-to-day management responsibilities to any such Officers, as determined by the Manager from time to time, and such Officers shall have the authority to contract for, negotiate on behalf of and otherwise represent the interests of the Company as so authorized by the Manager. Officers need not be Members of the Company, and any number of offices may be held by the same individual. The salaries or other compensation, if any, of the Officers of the Company (including the Manager, if applicable) shall be fixed from time to time by the Majority Vote of Membership Shares. The initial Officers of the Company are set forth on Schedule 2 attached hereto.

6.4 **No Other Authority.** Unless authorized to do so by this Agreement or pursuant to its provisions, no Member, Officer, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

6.5 **Compensation of Manager.** The Manager shall be reimbursed for all reasonable expenses incurred in managing the Company and shall be entitled to compensation in an amount to be determined from time to time by the Majority Vote of Membership Shares.

6.6 **Manager's Standard of Care.** In carrying out his duties and exercising his powers hereunder, the Manager shall exercise reasonable skill, care and business judgment. The Manager shall not be liable to the Company or to the other Members for any act or omission performed or omitted by him as Manager or Tax Matters Partner, unless such act or omission constitutes Disabling Conduct. In discharging his duties, the Manager shall be fully protected in relying in good faith upon the records required to be maintained under *Article 4* hereof and upon such information, opinions, reports or statements by any of the Company's other Members, or agents, or by any other Person, as to matters the Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or any other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid.

6.7 **Removal and Appointment of Managers.**

(a) **Additional Managers.** Additional Persons may be appointed to the position of Manager (in addition to the initial Manager) with the affirmative vote, consent or approval of the Majority Vote of Membership Shares.

(b) **Term of Manager.** The Manager shall serve until or unless: (a) an Event of Dissociation of the Manager as a Member occurs; (b) the personal physician of the Manager shall state in writing that, in his or her opinion, such Manager is physically or mentally incapacitated to such an extent that the Manager is unable to give prompt and intelligent attention to the Company's affairs, and the Manager shall be deemed to have resigned effective upon the filing in the Company's records of the physician's statement, whether or not the Manager may have been adjudicated or certified an incompetent person; or (c) the Manager is removed, with or without cause, by the affirmative vote, consent or approval of the Majority Vote of Membership Shares. Each individual by accepting the office of Manager, thereby agrees to cooperate in any medical examination necessary to implement this *Section 6.7*, waives the patient-physician privilege and consents to the disclosure of the Manager's medical records to the

extent required to implement this *Section 6.7*, and agrees that the Manager's obligation to comply with this *Section 6.7* is specifically enforceable.

(c) **Liability of Manager.** If the Manager ceases to be a Manager for any reason hereunder, such Person shall not be discharged from any debts and obligations the Manager may have had to or on behalf of the Company existing at the time such Person ceases to be the Manager, regardless of whether, at such time, such debts or liabilities were known or unknown, actual or contingent. A Person shall not be liable as a Manager for Company debts and obligations arising after such Person ceases to be a Manager. Any debts, obligations, or liabilities in damages to the Company of any Person who ceases to be a Manager shall be collectible by any legal means and the Company is authorized, in addition to any other remedies at law or in equity, to apply any amounts otherwise distributable or payable by the Company to such Person to satisfy such debts, obligations or liabilities.

6.8 Vacancies. In the event of the resignation of the Manager or the termination of the Manager's responsibilities pursuant to *Section 6.7* above, a successor Manager shall be elected by the affirmative vote, approval or consent of the Majority Vote of Membership Shares. The resignation or termination of a Manager who is also a Member shall not affect such Person's rights as a Member and shall not constitute his withdrawal as a Member (unless such Person is also expelled as a Member of the Company pursuant to *Section 13.8* hereof).

6.9 Right to Rely. Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Members as to (a) the identity of any Member, Manager or Officer; (b) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts by the Manager or Officer, or which are in any other manner germane to the affairs of the Company; or (c) the identity of the Persons who are authorized to execute and deliver any instrument or document on behalf of the Company. With the specific authorization of a resolution of the Members, signed or approved by the Members, the signature of the Manager or any Officer shall be sufficient to execute agreements and documents on behalf of the Company, including, without limitation, filings with regulatory authorities as shall be necessary for the conduct and management of the Company's business.

6.10 Limitation on Liability. Neither the Manager or any Officer nor any of their respective Affiliates shall be liable, responsible or accountable in damages or otherwise to the Company or the Members for any act or omission by any such Person performed in good faith pursuant to the authority granted to such Person by this Operating Agreement or in accordance with its provisions, and in a manner reasonably believed by such Person to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; *provided,* that such act or omission did not constitute Disabling Conduct.

ARTICLE 7 - RIGHTS, DUTIES AND LIMITATIONS OF MEMBERS

7.1 Condition Precedent to Membership. No Person may become a Member of the Company without first signing this Agreement or a counterpart signature page hereof. By signing this Agreement, each Member expressly agrees to be bound by all of the terms and conditions set forth in this Agreement.

7.2 Limitation of Liability. Each Member's liability shall be limited as set forth in this Agreement, the Act, and other applicable law. In addition, all debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and, unless otherwise provided in the Act, no Member shall be obligated personally for any such debt, obligation or liability solely by reason of being a Member. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Manager or any Member for liabilities of the Company.

7.3 Priority and Return of Capital. No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions of Net Cash from

Operations or other Company Property *provided, however,* that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

7.4 **Limitation on Management Rights.** Except as otherwise specifically provided in this Agreement, all determinations, decisions, approvals and actions affecting the Company and its business and affairs shall be determined, made, approved, or authorized by the Manager. All Members shall only be entitled to vote on any matter submitted to a vote of the Members under the terms of this Agreement. Assignees shall not be entitled to vote on any matters. A Member who resigns or withdraws shall become an Assignee.

7.5 **Acts Requiring a Majority Vote.** All matters voted upon by the Members shall be determined by the Majority Vote of Membership Shares.

7.6 **Pre-emptive Rights.** Except as may be otherwise specifically provided in this Agreement, no Member shall have any pre-emptive or other right to make any additional Capital Contributions, including without limitation, in connection with the admission of any Additional Member pursuant to *Section 13.2* hereof.

7.7 **Interest.** No Member shall be entitled to receive interest on such Member's Capital Contributions or Capital Account balance.

ARTICLE 8 - MEETINGS OF MEMBERS

8.1 **Annual Meeting.** The annual meeting of the Members shall be held once a year on the date determined each year by a Majority Vote of Membership Shares at a location designated by the Members or on such other date as the Members determine, commencing with the calendar year 2003. The Manager shall prepare or cause to be prepared an agenda of matters to be considered by the Members at each annual meeting. The day fixed for the annual meeting shall not be a legal holiday in the State of Idaho. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Company.

8.2 **Special Meetings.** Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Majority Vote of Membership Shares. Business transacted at any special meeting will be limited to the purpose or purposes stated in the meeting Notice.

8.3 **Notice of Meetings.** A written Notice stating the date, time, and purpose(s) of the special meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, in the manner provided in *Section 20.8* hereof, to each Member of record entitled to vote at such meeting.

8.4 **Waiver of Notice.** Notice of meetings of Members may be waived if, at any time before or after the action is completed, each Member entitled to Notice or to participate in the action to be taken, submits a signed written waiver of the Notice requirements, or if such requirements are waived, in such other manner permitted by applicable law. Neither the business to be transacted at, nor the purpose of, the meeting need be specified in the written waiver of Notice. Attendance at any meeting by a Member (in person or by proxy) will result in both of the following:

(a) Waiver of objection to lack of Notice or defective Notice of the meeting, unless the Member, at the beginning of the meeting or upon the Member's arrival, objects to the holding of the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting; and

(b) Waiver of objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting Notice, unless the Member objects to considering the matter when it is presented and does not thereafter vote for or assent to any action taken at the meeting regarding such matter.

8.5 Meeting of all Members. If all of the Members shall meet at any time and place, and all Members consent to the holding of a meeting at such time and place, such meeting shall be valid without call or Notice, and lawful action may be taken at any such meeting.

8.6 Record Date. For the purpose of determining Members entitled to vote at any meeting of Members or any adjournment thereof, or Members or Assignees entitled to receive payment of any Distributions of Net Cash from Operations or other Company Property, or in order to make a determination of Members or Assignees for any other purpose, the date on which Notice of the meeting is deemed delivered or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members and Assignees. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this *Section 8.6*, such determination shall apply to any adjournment thereof.

8.7 Quorum. Members representing a Majority Vote of Membership Shares present in person or represented by proxy shall constitute a quorum at any meeting of the Members. Regardless of whether a quorum is present at any such meeting, the Members present or represented at such meeting may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further Notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a Notice of the adjourned meeting shall be given to each Member of record. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during the meeting of that number of Membership Shares whose absence would cause less than a quorum.

8.8 Manner of Acting. If a quorum is present, the affirmative vote of a Majority Vote of Membership Shares shall be the act of the Members as to any matter submitted to a vote or requiring the consent of the Members.

8.9 Proxies. A Member entitled to vote at a meeting of Members or to express consent or dissent without a meeting may authorize other persons to act for such Member by proxy. Each proxy shall be in writing and signed by the Member or the Member's authorized Representative. Such proxy shall be filed with the Company. No proxy shall be valid after six (6) months from the date of its execution, unless otherwise provided in the proxy.

8.10 Telephonic Attendance. Members may participate in any meeting of the Members with the same effect as being present in person by means of conference telephone or similar communications equipment through which all persons participating in the meeting may communicate with the other participants. A Member must be permitted to participate in a meeting by that means if the Member so requests. All participants shall be advised of the communications equipment and the names of the participants in the conference shall be divulged to all participants. Participation in a meeting pursuant to this *Section 8.10* constitutes presence in person at such meeting.

8.11 Action by Written Consent of Members Without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without Notice and without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by Members having not less than the minimum number of Membership Shares that would be necessary to take the action at a meeting at which the holders of all

Membership Shares entitled to vote on the action were present and voted. In no instance where action is authorized by written consent shall a meeting of the Members be called or Notice be given; *provided, however*, a copy of the action taken by written consent shall be filed with the records of the Company. Any action taken under this *Section 8.11* shall be effective upon the date of the latest signature thereon, unless the consent specifies a different effective date. Reasonably prompt Notice of any action taken without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to Notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of Members to take the action were obtained. Written consent by the Members pursuant to this *Section 8.11* shall have the same force and effect as a vote of such Members held at a duly held meeting of the Members and may be stated as such in any document.

8.12 **Voting by Ballot.** Voting on any question or in any election may be by voice vote unless the presiding officer shall order or any Member shall demand that voting be by written ballot.

8.13 **No Cumulative Voting.** No Members shall be entitled to cumulative voting in any circumstance.

ARTICLE 9 - CAPITAL CONTRIBUTIONS

9.1 **Initial Contributions.** Each Initial Member shall make the Capital Contribution described for that Member on **Schedule 1** at the time and on the terms specified on **Schedule 1** and shall perform that Member's Commitment and shall receive that number of Membership Shares described on **Schedule 1**. If no time for the Capital Contribution is specified, the Capital Contribution shall be made at such time as the Initial Member signs this Agreement or a counterpart signature page hereto.

9.2 **Additional Member Contributions.** Each Additional Member shall make the Capital Contribution to which such Member has agreed, at the time or times and upon the terms to which the Additional Member has agreed in its Subscription Agreement, as provided in *Section 13.2* hereof. Any such Capital Contributions, and the name and address of any Additional Member making such Capital Contribution shall be added to **Schedule 1**, along with such Additional Member's number of Membership Shares and Sharing Ratio.

9.3 **Additional Capital Contributions.** In addition to the Capital Contributions set forth on **Schedule 1**, Members may determine from time to time through a Majority Vote of Membership Shares that additional Capital Contributions are needed to enable the Company to conduct and operate its business. Such additional Capital Contributions shall be a Commitment of each Member, subject to the remedies set forth in *Section 9.4* below. Upon the Members making such a determination, the Manager shall give Notice to all Members at least fifteen (15) Business Days prior to the date on which such Commitment is due. Such notice shall set forth the aggregate amount of and purpose for which such additional Capital Contributions are needed, the amount of each Member's Commitment, and the date by which the Members are required to contribute their additional Capital Contributions. Each Member's Commitment shall be the Member's proportionate share of the aggregate additional Capital Contribution, based upon the Member's Sharing Ratio.

9.4 **Enforcement of Commitments.** In the event any Member (a "Delinquent Member") fails to perform the Member's Commitment, as set forth in **Schedule 1** or in its Subscription Agreement, or fails to make any additional Capital Contribution as provided in *Section 9.3*, as applicable, the Manager shall give the Delinquent Member a Notice of the failure to meet the Commitment. If the Delinquent Member fails to perform the Commitment (including the payment of any costs associated with the failure to comply with the Commitment and interest on such obligations at the Default Interest Rate) within ten (10) Business Days of the giving of the Notice, the Company may take such action, including but not limited to, enforcing the Commitment in a court of appropriate jurisdiction in the state in which the Principal Office is located. Each Member expressly agrees to the exclusive jurisdiction of such courts, but only for the enforcement of Commitments. The Members may elect to allow the other Members to contribute the deficiency amount of the Commitment in proportion to each such Member's Sharing Ratios, with those Members who contribute ("Contributing Members") contributing additional amounts equal to any amount of the Commitment not contributed by the Delinquent Member. The Contributing Members

shall be entitled to treat such additional amounts contributed pursuant to this *Section 9.4* as a loan from the Contributing Members to the Delinquent Member, bearing interest at the Default Interest Rate and secured by the Delinquent Member's Membership Interest in the Company. Until they are fully repaid, the Contributing Members shall be entitled to all Distributions to which the Delinquent Member would have been otherwise entitled. Notwithstanding the foregoing, no Commitment or other obligation to make an additional Capital Contribution may be enforced by a creditor of the Company or other Person other than the Company, unless the Delinquent Member expressly consents to such enforcement or to the assignment of the obligation to such creditor.

9.5 **Loans by Members, Manager(s) and their Affiliates.** In the event the Company does not have sufficient cash to pay its obligations, a Member, a Manager or any Affiliate thereof, with the consent of a Majority Vote of Membership Shares, may advance all or part of the needed funds to or on behalf of the Company. If more than one Member wishes to advance funds to the Company as contemplated by this *Section 9.5*, the Members shall advance such funds in proportion to their relative Sharing Ratios. An advance pursuant to this *Section 9.5* shall constitute a loan from that Person to the Company, and shall not constitute a Capital Contribution. Advances made pursuant to this *Section 9.5* may, and, if requested by the lending Person or Persons, shall be, evidenced by a promissory note from the Company to the lending Person(s) bearing a non-usurious floating rate of interest equal to the Prime Rate plus 6%, which shall be adjusted on the first day of each calendar month for as long as the loan is outstanding, based on the Prime Rate in effect on the Business Day before the first day of such month. "Prime Rate" means the prime rate (or base rate) reported in the "Money Rates" column or section of *The Wall Street Journal* as being the base rate on corporate loans at larger U.S. money center banks on the first date on which *The Wall Street Journal* is published in each month. In the event *The Wall Street Journal* ceases publication of the Prime Rate, then the "Prime Rate" shall mean the "prime rate" or "base rate" announced by the bank with which the Company has its principal banking relationship (whether or not such rate has actually been charged by that bank). In the event that bank discontinues the practice of announcing that rate, "Prime Rate" shall mean the highest rate charged by that bank on short-term, unsecured loans to its most credit-worthy large corporate borrowers. The Company shall not be permitted to make any current Distributions to its Members, as contemplated in *Section 11.2(a)* hereof, unless and until all loans pursuant to this *Section 9.5* have been repaid in full.

ARTICLE 10 - CAPITAL ACCOUNTS AND ALLOCATIONS

10.1 **Capital Accounts.**

(d) **Establishment and Maintenance.** A separate Capital Account will be maintained for each Member and Assignee throughout the term of the Company in accordance with the rules of section 1.704-1(b)(2)(iv) of the Regulations. Each Member's and Assignee's Capital Account will be *increased* by (1) the amount of money contributed by such Person to the Company; (2) the fair market value of property contributed by such Person to the Company (net of liabilities secured by such contributed property subject to which the Company is considered to assume or take such property, as provided in section 752 of the Code); (3) allocations to such Member or Assignee of Net Profits; (4) any items in the nature of income and gain that are specially allocated to the Member or Assignee pursuant to this Agreement; and (5) allocations to such Member or Assignee of income and gain exempt from federal income tax. Each Member's or Assignee's Capital Account will be *decreased* by (1) the amount of money distributed to such Person by the Company; (2) the fair market value of Company Property distributed to such Person by the Company (net of liabilities secured by such distributed Property subject to which such Person is considered to assume or take such property, as provided in section 752 of the Code); (3) the amount of Net Loss and items of loss, deduction and expense that are specially allocated to the Member or Assignee pursuant to this Agreement; and (4) any other decreases required by the Regulations. In the event of a permitted Transfer of a Membership Interest or of Economic Rights in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest or Economic Rights.

(e) **Compliance With Regulations.** The manner in which Capital Accounts are to be maintained pursuant to this *Section 10.1* is intended to comply with the requirements of section 704(b) of the Code and the Regulations promulgated thereunder. If in the opinion of the Company's legal counsel or accountants the manner in which Capital Accounts are to be maintained pursuant to the preceding provisions of this *Section 10.1*

should be modified in order to comply with section 704(b) of the Code and the Regulations thereunder, then notwithstanding anything to the contrary contained in the preceding provisions of this *Section 10.1*, the Tax Matters Partner shall modify the method in which Capital Accounts are maintained; *provided, however*, that any change in the manner of maintaining Capital Accounts shall not materially alter the economic agreement between or among the Members.

10.2 Allocations to Capital Accounts.

(a) **General Rule**. Except as provided in this Agreement, Net Profit (and items thereof) and Net Loss (and items thereof) for any Fiscal Year shall be allocated among the Members in a manner such that if the Company were dissolved, its assets sold for their book value, its affairs wound up and its remaining assets (after payment of its liabilities) distributed to the Members in accordance with their respective positive Capital Account balances immediately after making such allocation, such Distributions would, as nearly as possible, be equal (proportionately) to the amount of the Distributions that would be made pursuant to *Article 11* hereof. The Tax Matters Partner may make such other assumptions (whether or not consistent with the foregoing) as it deems necessary or appropriate in order to effectuate the intended economic sharing arrangement of the Members as reflected in *Article 11* of this Agreement.

(b) **Regulatory and Related Allocations.** Notwithstanding any other provision in this Agreement to the contrary, the following special allocations will be made in the following order:

(i) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Agreement, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with section 1.704-2(g) of the Regulations. Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with section 1.704-2 of the Regulations. This *Section 10.2(b)(i)* is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(ii) **Qualified Income Offset.** In the event any Member unexpectedly receives any adjustments, allocations or distributions described in sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations with respect to such Member's Capital Account, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible; *provided*, that an allocation pursuant to this *Section 10.2(b)(ii)* shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Section 10.2* have been tentatively made as if this *Section 10.2(b)(ii)* were not in this Agreement. This *Section 10.2(b)(ii)* is intended to constitute a "qualified income offset" within the meaning of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

(iii) **Nonrecourse Deductions**. Any Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Members in accordance with their respective Capital Accounts.

(iv) **Gross Income Allocation.** In the event any Member has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Member's Adjusted Capital Account Deficit as quickly as possible; *provided*, that an allocation pursuant to this *Section 10.2(b)(iv)* shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Section 10.2* (other than *Section 10.2(b)(ii)*) have been tentatively made as if this *Section 10.2(b)(iv)* were not in this Agreement.

(v) **Loss Allocation Limitation.** No allocation of Net Loss (or items thereof) shall

be made to any Member to the extent such allocation would create or increase an Adjusted Capital Account Deficit with respect to such Member.

(c) **Regulatory Allocations.** The allocations set forth in this *Section 10.2* (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations under section 704 of the Code. Notwithstanding any other provision of this *Article 10* (other than the Regulatory Allocations), it is the intent of the Members that the Regulatory Allocations shall be taken into account in allocating other Company items of income, gain, loss, deduction and expense among the Members so that, to the extent possible, the net amount of such allocations of other Company items and the Regulatory Allocations shall be equal to the net amount that would have been allocated to the Members pursuant to this *Section 10.2* if the Regulatory Allocations had not been made.

(d) **Section 754 Adjustments.** Pursuant to section 1.704-1(b)(2)(iv)(m) of the Regulations, to the extent an adjustment to the adjusted tax basis of any Company asset under sections 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(e) **Transfer of or Change in Membership Interests.** The Tax Matters Partner is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation and/or special allocation of items of Company income, gain, loss, deduction and expense with respect to a newly issued Membership Interest, a transferred Membership Interest or transferred Economic Rights or a redeemed Membership Interest. A transferee of a Membership Interest or Economic Rights shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred Membership Interest.

(f) **Organization Expenses.** At the request of a the Members through a Majority Vote of Membership Shares, the Tax Matters Partner shall allocate Organization Expenses (and, to the extent necessary, any other items in lieu thereof) to the Capital Accounts of the Members so that, as nearly as possible, the cumulative amount of such organization expenses (and such other items in lieu thereof) allocated with respect to each Membership Interest is the same amount.

(g) **Allocation Periods and Unrealized Items.** Subject to applicable Regulations and notwithstanding anything expressed or implied to the contrary in this Agreement, the Tax Matters Partner may determine allocations to Capital Accounts based on an annual, quarterly or other period and/or on realized and unrealized net increases or net decreases (as the case may be) in the fair market value of Company Property.

10.3 Tax Allocations.

(a) Items of Company income, gain, loss, deduction and expense shall be allocated, for federal, state and local income tax purposes, among the Members in the same manner as Net Profit (and items thereof) and Net Loss (and items thereof) of which such items are components were allocated pursuant to *Section 10.2* above; *provided*, that solely for federal, state and local income tax purposes, allocations shall be made in accordance with section 704(c) of the Code and the Regulations promulgated thereunder, to the extent so required thereby.

(b) Allocations pursuant to this *Section 10.3* are solely for federal, state and local tax purposes and shall not affect, or in any way be taken into account in computing, any Member's or Assignee's Capital Account or share of Net Profit (and items thereof) or Net Loss (and items thereof).

(c) The Members are aware of the tax consequences of the allocations made by this *Section 10.3* and hereby agree to be bound by the provisions of this *Section 10.3* in reporting their shares of items of Company income, gain, loss, deduction and expense.

10.4 Determination of Tax Matters Partner. All matters concerning the computation of Capital Accounts, the allocation of Net Profit (and items thereof) and Net Loss (and items thereof), the allocation of items of Company income, gain, loss, deduction and expense for tax purposes, the making of revocations of elections and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Tax Matters Partner, with the affirmative vote, consent or approval of a Majority Vote of Membership Shares. Such determination shall be final and conclusive as to all the Members. Notwithstanding anything expressed or implied to the contrary in this Agreement, in the event the Tax Matters Partner shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to effectuate the intended economic sharing arrangement of the Members as reflected in *Article 11* below, the Tax Matters Partner may make such modification.

ARTICLE 11- DISTRIBUTIONS

11.1 Withdrawals and Distributions in General. No Member shall have the right to withdraw or demand Distributions of any amount in the Member's Capital Account, except as expressly provided in this *Article 11*.

11.2 Current and Mandatory Tax Distributions.

(a) Current Distributions. Net Cash from Operations shall be distributed on a quarterly basis in accordance with each Member's Membership Share.

(b) Mandatory Tax Distributions. The Company shall distribute to the Members and Assignees, in accordance with their Sharing Ratios, from any Net Cash from Operations, an amount sufficient to pay the federal and state income taxes on any income for such Fiscal Year that passes through the Company to the Members and Assignees, under the applicable provisions of the Code (net of any tax benefit produced for the Members and Assignees by the Company's losses, deductions and credits for the same Fiscal Year). Such taxes shall be determined conclusively by presuming that (a) all taxable income that passes through to a Member or Assignee will be taxed at the maximum federal rate (without regard to exemptions or phase-outs of lower tax rates) and at the maximum State of Idaho rate at which income of any natural person or Entity, as applicable, can be taxed in the calendar year that includes the last day of the Fiscal Year and (b) losses, deductions and credits produce tax benefits using the same tax rates. The Company shall make any such mandatory tax Distributions in a timely manner at such intervals as will allow the taxes (including, without limitation, estimated tax payments) attributable to the income passed through the Company to any Member or Assignee to be paid when due. If the aggregate amount of such Distributions under this *Section 11.2(b)* exceeds such Member's or Assignee's actual federal and state income taxes for such year, the Company's obligation to make further Distributions to the Members and Assignees pursuant to this *Section 11.2(b)* shall be reduced by the amount of such excess until such excess has been fully deducted from such Distribution.

11.4 Liquidating Distributions. Notwithstanding the other provisions of this *Article 11*, Distributions in liquidation of the Company shall be made to each Member and Assignee in the manner set forth in *Section 14.2* of this Agreement.

11.4 Distributions in Kind. The Company may make Distributions in kind if a Majority Vote of Membership Shares determines a disposition of assets at the time of Distribution would be in the best interests of the Members. For all purposes of this Agreement, (i) any Company Property (other than cash) that is distributed in kind to one or more Members with respect to a Fiscal Year (including any in-kind Distribution upon the dissolution and winding-up of the Company) shall be deemed to have been sold for cash (in U.S. dollars) equal to its fair market value (net of any relevant liabilities secured by such Property); (ii) the unrealized gain or loss inherent in such Company Property shall be treated as recognized gain or loss for purposes of determining Net Profit or Net Loss; (iii) such gain or loss shall be allocated to the Member's Capital Accounts pursuant to *Article 10* for such Fiscal Year; and (iv) such in-kind Distribution shall be made after giving effect to such allocation pursuant to *Article 10*.

11.5 Withholding. Notwithstanding anything expressed or implied to the contrary in this Agreement, the Manager is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any federal, state, local and foreign withholding requirement with respect to any payment, allocation or Distribution by the Company to any Member, Assignee or other Person. All amounts so withheld, and, in the manner determined by the Manager, amounts withheld with respect to any payment, allocation or distribution by any Person to the Company, shall be treated as Distributions to the Members and Assignees under the applicable provisions of this Agreement. If any such withholding requirement with respect to any Member or Assignee exceeds the amount distributable to such Member or Assignee under this Agreement, or if any withholding requirement was not satisfied with respect to any item previously allocated, paid or distributed to such Member or Assignee, such Member, or Assignee or any successor or assignee with respect to such Person, hereby indemnifies and agrees to hold harmless the Tax Matters Partner, the Manager, the other Members and the Company for such excess or amount or such amount required to be withheld, as the case may be, together with any applicable interest, additions or penalties thereon.

11.6 Restrictions on Distributions. The foregoing provisions of this *Article 11* to the contrary notwithstanding, no Distribution shall be made (a) if such Distribution would violate the Act, or any other law, rule, regulation, order or directive of any Governmental Body then applicable to the Company; (b) other than mandatory tax-related Distributions pursuant to *Section 11.2(b)* above, if any, to the extent the Manager determines, with the affirmative vote, consent or approval of the Majority Vote of Membership Shares, that any amount otherwise distributable should be retained by the Company to pay, or to establish Reserves for the payment of, any liability or obligation of the Company, whether liquidated, fixed, contingent or otherwise, or to hedge an existing investment; or (c) to the extent that the Manager determines, with the affirmative vote, consent or approval of the Majority Vote of Membership Shares, that the Net Cash from Operations available to the Company is insufficient to permit such Distribution.

ARTICLE 12 - TRANSFER OF INTERESTS

12.1 Transfers. No Member or Assignee (in each case, the "Transferor") may Transfer all or any portion of such Person's interest in the Company, whether the Transferor's Membership Interest or Economic Rights (in each case, an "Interest"), ***unless*** the Transfer is a Permitted Transfer as described in *Section 12.2* below. Any purported Transfer, other than in strict accordance with this *Article 12*, shall be null and void *ab initio*, and of no force or effect whatsoever against the Company, any other Member, any creditor of the Company or any claimant against the Company; *provided, however*, that, *if* the Company is required to recognize a Transfer not permitted under *Section 12.2* (or if a Majority Vote of the Remaining Membership Shares, in their discretion, elect to recognize a Transfer that is not so permitted), the Interest transferred shall be strictly limited to the Transferor's Economic Rights. The provisions of this *Section 12.1* and the provisions of *Section 12.4* below shall not apply to Transfers occurring with respect to a Financing Event.

12.2 Permitted Transfers.

(a) Subject to the conditions and restrictions set forth in *Section 13.4* below, each of the following Transfers shall be a "Permitted Transfer" for purposes of this Agreement:

(i) all Members who are natural Persons may Transfer all or any part of their Interest by way of gift for estate planning purposes to any member of their Immediate Family or to any trust, partnership or similar estate planning vehicle for the benefit of any such Immediate Family member or members;

(ii) all Members who are not natural Persons may transfer all or part of their Interest to their respective equity holders;

(iii) all Members may Transfer all or any part of their Interest to another Member; and

(iv) all Members may transfer all or any part of their Interest if a Majority Vote of Membership Shares shall have approved the Transfer, and the Transferor has complied with the Right of First Refusal imposed by *Section 12.4* below.

(b) Notwithstanding any provision of *Section 12.2(a)* to the contrary, any Assignee of a Permitted Transfer under *Section 12.2(a)* shall be admitted as a Substitute Member only in accordance with the provisions of *Section 13.3* hereof; *provided, however*, that (i) any current Member who receives a Permitted Transfer described in *Section 12.2(a)(iii)* above shall be automatically admitted as a Substitute Member with respect to the Interest transferred without any vote or other action of the Members pursuant to *Section 13.3*; and (ii) an Assignee of a Permitted Transfer described in *Section 12.2(a)(iv)* above that has been approved by a Majority Vote of Membership Shares shall, unless otherwise expressly provided in connection with such vote, be automatically admitted as a Substitute Member without a separate vote of the Members pursuant to *Section 13.3*.

12.3 Conditions to Permitted Transfers. Notwithstanding any provision of *Section 12.2* to the contrary, a Transfer shall not be permitted under this *Article 12* unless and until the following conditions are satisfied:

(a) The Transferor and Assignee shall execute and deliver to the Company such documents and instruments of conveyance as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the agreement of the Assignee to be bound by the terms and conditions of this Agreement. In all cases, the Company shall be reimbursed by the Transferor and/or Assignee for all costs and expenses that the Company reasonably incurs in connection with the Transfer.

(b) The Transferor and Assignee shall provide to the Company the Assignee's taxpayer identification number, sufficient information to determine the Assignee's initial tax basis in the Interest transferred and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any Distributions otherwise provided for in this Agreement with respect to any Interest transferred until it has received such information.

(c) If required by a Majority Vote of Membership Shares upon the advice of legal counsel, the Transferor shall furnish to the Company an opinion of counsel, which counsel and opinion shall be reasonably satisfactory to the Members, that (i) the Transfer will not cause the Company to terminate for federal income tax purposes under section 708 of the Code; (ii) the Transfer will not cause the application to the Company, to any Company Property or to any of the Members of the rules of sections 168(g)(1)(B) and 168(h) of the Code (generally referred to as the "tax exempt entity leasing rules"); (iii) the Transfer will not cause the Company to be deemed to be an "investment company" under the Investment Company Act of 1940; and (iv) either the Interest transferred has been registered under the Securities Act of 1933, as amended, and any applicable state securities laws, or the Transfer is exempt from all applicable registration requirements and will not violate any applicable laws regulating the transfer, issue and sale of securities.

(d) If the Assignee is to become a Substitute Member as a result of the Transfer, the provisions of *Section 13.3* shall have been complied with.

12.4 Right of First Refusal.

(a) **Grant.** The Company and the Members are hereby granted a right of first refusal (the "Right of First Refusal"), exercisable in connection with any proposed Transfer of an Interest (or portion thereof), except for any Permitted Transfers described in clauses (i), (ii) and (iii) of *Section 12.2(a)* above, or any Transfer associated with a Financing Event.

(b) **Notice of Intended Transfer.** In the event a Transferor desires to accept a bona fide third

party offer for the Transfer of all or any part of the Transferor's Interest (the Interest subject to such offer being hereinafter referred to as the "Target Interest"), the Transferor shall promptly deliver to the Company and the other Members written notice (the "Transfer Notice") of the terms and conditions of the offer, including the purchase price and the identity of the third party offeror.

(c) **Exercise of Right.** For a period of thirty (30) days following receipt of the Transfer Notice (the "Company Exercise Period"), the Company shall have the right to purchase all of the Target Interest specified in the Transfer Notice upon the same terms and conditions described therein or upon terms and conditions which do not materially vary from those specified in the Transfer Notice. The determination as to whether the Company will exercise its Right of First Refusal shall be made by a Majority Vote of the Remaining Membership Shares. The Right of First Refusal shall be exercisable by the Company's delivery to the Transferor of written notice to that effect (the "Company Exercise Notice") prior to the expiration of the Company Exercise Period. If such right is not exercised by the Company within the Company Exercise Period, then the non-selling Members (the "Remaining Members") shall have the right, exercisable within thirty (30) days immediately following expiration of the Company Exercise Period (the "Member Exercise Period") to purchase all (but not less than all) of the Target Interest specified in the Transfer Notice upon the same terms and conditions described therein or upon terms and conditions which do not materially vary from those specified therein, with such right exercisable by those Remaining Members exercising such right giving the Transferor written notice to that effect (the "Member Exercise Notice") prior to the expiration of the Member Exercise Period (the Member Exercise Notice, together with the Company Exercise Notice, is referred to as the "Exercise Notice"). If more than one Remaining Member shall exercise its Right of First Refusal, the Remaining Members shall purchase the Target Interest in such proportion as they shall agree; and, absent such agreement, the Remaining Members shall purchase the Target Interest in proportion to their Sharing Ratios.

(d) **Purchase of Target Interest.** If the foregoing Right of First Refusal is exercised by the Company (which exercise must be approved by a Majority Vote of the Remaining Membership Shares, as provided above), or by the Remaining Members, then the Company or the Remaining Members, as appropriate, shall effect the purchase of the Target Interest, including payment of the purchase price therefor, on the same terms as specified in the Exercise Notice, and the Transferor shall deliver to the Company or the Remaining Members, as appropriate, the Membership Share Certificate(s), if any, representing the Target Interest to be purchased, each such Membership Share Certificate to be properly endorsed for Transfer. Should the purchase price specified in the Transfer Notice be payable in Property other than cash or evidences of indebtedness, the Company or the Remaining Members, as appropriate, shall have the right to pay the purchase price in the same form of Property or, at their option, in the form of cash equal in amount to the value of such Property. If the Transferor and the Company or the Remaining Members, as appropriate, cannot agree on such cash value, or on the value of the Property proposed to be used by the Company or the Remaining Members, as the case may be, within five (5) days after the Transferor's receipt of a relevant Exercise Notice, the valuation shall be made by an appraiser of recognized standing selected by the Transferor and the Company or the Remaining Members, as appropriate; or, if they cannot agree on such appraiser within the foregoing 5-day period, each party shall select an appraiser of recognized standing, and the two appraisers so selected shall select a third appraiser of recognized standing, whose appraisal shall be determinative of such value. The cost of the appraisal shall be shared equally by the Transferor and by the Company or the Remaining Members, as appropriate. The closing of the sale shall be held on the *later of* (i) the tenth (10^{th}) business day following delivery of the Exercise Notice, or (ii) the tenth (10^{th}) business day after the valuation shall have been finalized.

(e) **Non-Exercise of Right.** In the event that neither the Company Exercise Notice nor the Member Exercise Notice is given to the Transferor within the Company Exercise Period or the Member Exercise Period, as appropriate, the Transferor shall have a period of ninety (90) days thereafter in which to sell or otherwise Transfer the Target Interest to the third party offeror identified in the Transfer Notice on such terms and conditions (including, without limitation, purchase price) not more favorable to the third party offeror than those specified in the Transfer Notice; *provided, however*, that under no circumstances may any such sale or disposition be effected in contravention of the provisions of *Section 12.3* (and, if the Transfer is intended to result in the Assignee becoming a Substitute Member, in accordance with the provisions of *Section 13.3*). In the event the Transferor does not effect the Transfer of the Target Interest within the specified 90-day period, the Company's and Remaining Members' Rights of

First Refusal shall continue to be applicable to any subsequent Transfer of the Target Interest by the Transferor.

ARTICLE 13 - ADDITIONAL MEMBERS; EVENTS OF DISSOCIATION; WITHDRAWALS

13.1 Admissions. No Person shall be admitted to the Company as an Additional Member or as a Substitute Member, except in accordance with *Section 13.2* or *Section 13.3*, respectively. Any purported admission which is not in accordance with this *Article 13* shall be null and void *ab initio*. Upon admission of any Additional or Substitute Member, or upon an Event of Dissociation with respect to any Member, the books and records of the Company, including, without limitation, **Schedule 1** hereto, shall be revised accordingly to reflect such admission or Event of Dissociation.

13.2 Admission of Additional Members. A Person shall become an Additional Member pursuant to the terms of this Agreement only if and when each of the following conditions is satisfied: (a) a Majority Vote of Membership Shares consent to such admission, and the terms and conditions thereof, including, without limitation, the nature and amount of the Capital Contribution to be contributed by such Person; (b) the Company receives a signed and completed Subscription Agreement and/or such other documents and instruments as may be necessary or appropriate in the opinion of counsel to the Company to confirm the agreement of such Person to become an Additional Member and to be bound by the terms and conditions of this Agreement; and (c) the Company receives such Person's Capital Contribution as so determined.

13.3 Admission of Assignee as Substitute Member. An Assignee of an Interest may be admitted as a Substitute Member and admitted to all rights of the Member who initially assigned the Interest, including without limitation, all Management Rights with respect thereto, only if and when each of the following conditions is satisfied:

(a) The Company receives such documents and instruments as may be necessary or appropriate in the opinion of counsel to the Company to confirm the agreement of such Person to become a Substitute Member and to be bound by the terms and conditions of this Agreement;

(b) Such Assignee shall have paid to the Company the amount determined by the Members to be equal to the costs and expenses incurred in connection with such Transfer, including, without limitation, costs incurred in preparing and filing such amendments to this Agreement as may be required;

(c) A Majority Vote of Membership Shares consents to such admission, which consent may be given or arbitrarily withheld in the sole and absolute discretion of each such Member;

(d) If required by the Members, such Assignee shall execute and swear to an instrument by the terms of which such Person acknowledges that the relevant Interest has not been registered under the Securities Act of 1933, or any applicable state securities laws, and covenants, represents and warrants that such Assignee acquired the relevant Interest for investment only and not with a view to the resale or distribution thereof;

(e) If the Assignee is not a natural person of legal majority, the Assignee provides the Company with evidence reasonably satisfactory to counsel for the Company of the authority of the Assignee to become a Member and to be bound by the terms and conditions of this Agreement; and

(f) Such Assignee shall furnish the Company with such other similar information as the Members may reasonably request.

13.4 Rights and Obligations of Transferors and Assignors.

(a) A Transfer by any Transferor shall not itself dissolve the Company or entitle the Assignee to become a Substitute Member or exercise any rights of a Member, including, without limitation, any Management Rights, except in accordance with the provisions of *Section 13.3* above.

(b) Except as hereinafter provided, any Transfer of a Transferor's Interest, including, without limitation, any involuntary Transfer by operation of law or otherwise, shall eliminate the Transferor's power and right to vote (in proportion to the extent of the Interest transferred), on any matter submitted to the Members; and for voting purposes, such Interest shall not be counted as outstanding in proportion to the extent of the Interest transferred. A Transfer of a Transferor's Interest, however, shall not otherwise eliminate the Member's entitlement to any other Management Rights associated with the Member's interest, including, without limitation, rights to information.

(c) A Substitute Member shall have, to the extent of the Interest transferred, all the rights and powers, and shall be subject to all the restrictions and liabilities, of a Member, and shall be liable for any obligations of the Transferor to make Capital Contributions. Notwithstanding the admission of a Substitute Member, the Transferor shall not be released from any of the Transferor's liabilities and obligations to the Company outstanding as of the effective time of the Transfer solely as a result of the Transfer, including, without limitation, the Transferor's Commitment.

(d) An Assignee who is not admitted as a Substitute Member pursuant to *Section 13.3* shall be entitled only to the Economic Rights with respect to the Interest transferred, and shall have no Management Rights (including, without limitation, voting rights or rights to any information or accounting of the affairs of the Company or to inspect the books or records of the Company) with respect to the interest transferred. If the Assignee thereafter becomes a Substitute Member, the voting rights and all other Management Rights associated with the Interest transferred shall be restored and shall be held by the Substitute Member along with all Economic Rights with respect such Interest.

(e) If a court of competent jurisdiction charges an Interest in the Company with the payment of an unsatisfied amount of a judgment, to the extent so charged, the judgment creditor shall be treated as an Assignee; *provided*, that any such charge not satisfied within the 60-day period specified in *Section 13.6(c)* shall cause an Event of Dissociation thereunder.

13.5 **Distributions and Allocations Regarding Transferred Interests.** Upon any Transfer during any Fiscal Year made in compliance with the provisions of this Agreement, Net Profits and Net Losses and all other items attributable to such Interest for the Fiscal Year shall be divided and allocated between the Transferor and the Assignee by taking into account their varying interests during the Fiscal Year in accordance with section 706(d) of the Code, using any conventions permitted by law and selected by the Tax Matters Partner. All Distributions on or before the date of the Transfer shall be made to the Transferor and all Distributions thereafter shall be made to the Assignee.

13.6 **Events of Dissociation.** Each of the following events shall be an "Event of Dissociation" for purposes of this Agreement which shall terminate the continued membership in the Company of a Member affected thereby and which cause such Member or any successor in interest thereto to be deemed an Assignee for purposes of this Agreement with respect to any Interest in the Company held thereby, with the consequence that the Event of Dissociation will eliminate the power and right of such Member to vote on any matter submitted to the Members (and cause such Interest to not be counted as outstanding) unless and until the successor in interest, if any, holding such Interest is admitted as a Member in accordance with *Section 13.3* and the voting rights associated therewith are restored in accordance with *Section 13.4(d)*):

(a) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's person or estate;

(b) The expulsion of a Member pursuant to *Section 13.8*;

(c) The Bankruptcy of a Member or the entry of a charging order against the Member's Interest in the Company that is not released or satisfied within 60 days;

(d) In the case of a Member acting as a Member by virtue of being trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(e) In the case of a Member that is a separate Entity other than a corporation, the dissolution and commencement of winding up of the separate Entity; or

(f) In the case of a Member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its charter.

13.7 **Withdrawal.** No Member has the power to withdraw voluntarily from the Company. A Member that purports to withdraw voluntarily from the Company prior to any dissolution of the Company shall be in breach of this Agreement, shall be liable to the Company for any Damages arising directly or indirectly from such purported withdrawal and shall not be entitled to any Distributions from the Company by reason of such withdrawal, including, without limitation, any distribution described in Section 53-630 of the Act. The provisions of this *Section 13.7* (other than the prohibition on Distributions, which shall apply in all circumstances) shall not apply to withdrawals resulting from any Event of Dissociation, including, without limitation, the death or adjudicated incompetence of a Member, *other than* an expulsion of a Member by the Members as provided in *Section 13.8* below.

13.8 **Expulsion.** A Member may be expelled from the Company upon a determination by a Majority Vote of Membership Shares (or by a court upon application of any Member) that the Member has been guilty of Disabling Conduct. An expelled Member shall be treated as having withdrawn voluntarily from the Company in breach of this Agreement on the date of the determination of expulsion by the Members or the court.

ARTICLE 14 - DISSOLUTION AND WINDING UP

14.1 **Dissolution Events.** The Company shall dissolve and commence winding up and liquidation upon the first to occur of any of the following (each, a "Dissolution Event"):

(a) **Expiration of Term.** Upon the expiration of the Term set forth in *Section 1.6* of this Agreement.

(b) **Determination of Members.** The affirmative vote, consent or approval of the Majority Vote of Membership Shares to dissolve, wind up and liquidate the Company.

(f) **Judicially.** The entry of a decree of judicial dissolution under Section 53-643 of the Act.

Notwithstanding anything in Section 53-642 of the Act to the contrary, to the maximum extent permitted by law, the Dissolution Events specified in this *Section 14.1* are the exclusive events that may cause the Company to dissolve, and the Company shall not dissolve prior to the occurrence of a Dissolution Event.

14.2 **Liquidation and Termination.** Upon the happening of any of the Dissolution Events specified in *Section 14.1*, a Majority Vote of Membership Shares shall appoint a liquidator (the "Liquidator"), who may or may not be an agent or Representative of a Member. The Liquidator shall proceed diligently to wind up the affairs of the Company and make final Distributions as provided in this Agreement and in the Act. The costs of liquidation shall be borne as a Company expense; in addition, any Member who performs more than *de minimis* services in completing the winding up and termination of the Company pursuant to this *Article 14* shall be entitled to receive reasonable compensation for services performed. Until final Distribution, the Liquidator shall continue to operate the Company

properties with all of the power and authority of the Members. The steps to be accomplished by the Liquidator are as follows:

(g) **Accounting.** As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(h) Notice. The Liquidator shall cause the notice described in Section 53-648 of the Act to be mailed to each known creditor of and claimant against the Company in the manner described in such Section 53-648.

(i) **Winding Up, Liquidation and Distribution of Assets.** The Liquidator shall sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members and Assignees in kind) and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

(i) ***First***, payment of creditors, including Members and their Affiliates who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, other than liabilities for Distributions to Members;

(ii) ***Second***, to establish any Reserves that the Liquidator deems reasonably necessary for contingent or unforeseen obligations of the Company and, at the expiration of such period as the Liquidator shall deem advisable, the balance then remaining in the manner provided in subparagraph (iii) below;

(iii) ***Thereafter***, by the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation), to the Members and Assignees in accordance with the positive balances in their Capital Accounts, after giving effect to all Capital Contributions, Distributions and allocations for all periods.

(j) **Purchase of Company Assets.** Except as provided in *Section 14.2* above, any Member shall have the right to bid on any sales of assets of the Company made pursuant to this *Article 14*.

14.4 Allocation of Net Profit and Loss in Liquidation. The allocation of Net Profit, Net Loss and other items of the Company following the date of dissolution, including but not limited to gain or loss upon the sale of all or substantially all of the Company's assets, shall be determined in accordance with the provisions of *Article 10* and shall be credited or charged to the Capital Accounts of the Members and Assignees in the same manner as Net Profit, Net Loss, and other items of the Company would have been credited or charged if there were no dissolution and liquidation.

14.5 No Obligation to Restore Negative Capital Account Balance on Liquidation. Notwithstanding anything seemingly to the contrary in this Agreement, upon a liquidation within the meaning of section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member or Assignee has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member or Assignee shall have no obligation to make any Capital Contribution to the Company, and the negative balance of such Person's Capital Account shall not be considered a debt owed by such Member or Assignee to the Company or to any other Person for any purpose whatsoever.

14.6 Articles of Dissolution. On completion of the distribution of Company assets as provided in this *Article 14*, the Company shall be deemed terminated, and the Liquidator (or such other Person or Persons as the Act may require or permit) shall file Articles of Dissolution with the Secretary of State of the State of Idaho, cancel any other filings made, and take such other actions as may be necessary to terminate the Company in accordance with the provisions of the Act.

14.7 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution of the Company, each Member and Assignee shall look solely to the assets of the Company for the return of its Capital Contributions. If the Company Property remaining after the payment or discharge of liabilities of the Company is insufficient to return the Capital Contributions of the Members and Assignees, no Member or Assignee shall have recourse against any other Member or Assignee.

14.8 No Action for Dissolution. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should bring an action in court to dissolve the Company under circumstances where dissolution is not required by *Section 14.1*. This Agreement has been drafted to provide fair treatment of all parties and equitable payment in liquidation of the Company. Accordingly, except for their duties to liquidate the Company as required by this *Article 14*, each Member hereby waives and renounces its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that (a) it is not reasonably practicable to carry on the business of the Company in conformity with the Articles or this Agreement, or (b) dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member. Damages for breach of this *Section 14.8* shall be monetary damages only (and not specific performance), and the Damages may be offset against Distributions by the Company to which such Member would otherwise be entitled.

ARTICLE 15 - EXCULPATION AND INDEMNIFICATION

15.1 Definitions. For purposes of this *Article 15*, each of the following terms shall have the meaning ascribed to such term in this *Section 15.1*.

(a) **Covered Person.** The term "Covered Person" means and includes any of the following Persons: (i) any former, current or future Member or Assignee; (ii) any former, current or future Tax Matters Partner; (iii) any former, current or future Manager; or (iv) any former, current or future Officer, affiliate, trustee, trustor, beneficiary, member, manager, partner, shareholder, director, employee, representative, legal counsel or agent of the Company, any Affiliate of the Company or any of the Persons listed in clauses (i), (ii) or (iii).

(b) **Proceeding.** The term "Proceeding" means and includes any threatened, pending or completed demand, mediation, arbitration, suit, cause of action, action or other proceeding, whether civil, criminal, administrative or investigative in nature, to which a Covered Person is a party or in which a Covered Person is otherwise involved. Without limiting the generality of the foregoing, "Proceeding" shall expressly include: (i) any Proceeding brought by the Company against such Covered Person or brought in the right of the Company by any Person against such Covered Person; and (ii) any Proceeding brought to establish any right to exculpation or indemnification under this *Article 15*.

(c) **Claim.** The term "Claim" means and includes any claim, loss, damages, liability, loss, judgment, fine, settlement, compromise, award, cost, expense or other amount arising from or otherwise related to any Proceeding, including, without limitation, any attorneys' fees, costs and disbursements, expert witness fees or related costs incurred in such Proceeding and any costs or expenses incurred in connection or otherwise related to such Covered Person's establishment of a right to exculpation or indemnification in such Proceeding under this *Article 15*.

15.2 Exculpation. Notwithstanding any provision of this Agreement to the contrary, whether express or implied, or any obligation or duty at law or in equity, and except to the extent otherwise explicitly provided by any other agreement or by applicable law, no Covered Person shall be liable to the Company or to any other Person for any act or omission related to the Company and the conduct of its business, this Agreement, any related document, or any transaction or investment contemplated by this Agreement or any related document to the extent that: (a) such act was committed or such omission was made (i) in good faith by such Covered Person, and (ii) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of such Covered Person's authority, as granted pursuant to this Agreement; and (b) such act or omission did not constitute Disabling Conduct.

15.3 Indemnification. To the fullest extent permitted by applicable law, except as otherwise explicitly provided by any other agreement, the Company hereby indemnifies each Covered Person against and hereby agrees to defend and protect such Covered Person against and to hold such Covered Person free and harmless from any and all Claims arising from or otherwise related to such Covered Person's act or omission to the extent that (a) such act or omission was related to the Company or its business, this Agreement, any related document, or any transaction or investment contemplated by this Agreement or any related document; (b) such act was committed or such omission was made (i) in good faith by such Covered Person, and (ii) in the reasonable belief that such act or omission was in the Company's best interests and within the scope of such Covered Person's authority, as granted pursuant to this Agreement; and (c) such act or omission did not constitute Disabling Conduct.

15.4 Limit on Indemnification. Notwithstanding *Section 15.3* hereof to the contrary, no Covered Person shall be entitled to indemnification under *Section 15.3* in any Proceeding to the extent that such Covered Person initiated the Proceeding, unless (a) the Proceeding was brought to enforce the Covered Person's rights to indemnification hereunder, or (b) the Members authorized, directed, consented to, approved or ratified the bringing of the Proceeding, by formal resolution or other action.

15.5 Advanced Expenses. Costs and expenses actually and reasonably incurred by a Covered Person in any Proceeding shall be paid by the Company in advance of final disposition of the Proceeding upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to exculpation under *Section 15.2* hereof and indemnification under *Section 15.3* hereof.

15.6 Tender of Defense. Any Covered Person may tender the defense of any Proceeding or make demand for exculpation or indemnification under this *Article 15* by providing Notice in accordance with this Agreement to the Manager and the Members. Upon any tender of defense, the Company shall appoint such legal counsel for the Covered Person as the Covered Person may reasonably approve and, subject to the terms, conditions and other provisions of this *Article 15*, shall pay all attorneys' fees and related costs incurred by the Covered Person to such legal counsel directly and in a timely manner.

15.7 No Presumption. The termination of any Proceeding by a judgment, decree, order, injunction, settlement, compromise, award, conviction or upon a plea of *nolo contendere* (or its equivalent) shall not, of itself, create a presumption that (a) a Covered Person did not act in good faith; or (b) that the Covered Person acted in a manner which (i) was not in the Company's best interests, (ii) was not within the scope of the Covered Person's authority, or (iii) the Covered Person did not reasonably believe to be in the Company's best interests within the scope of the Covered Person's authority as provided in this Agreement.

15.8 Successful Defense. To the extent that any Covered Person is successful on the merits in defense of any Proceeding, the Covered Person shall be deemed and considered entitled to exculpation under *Section 15.2* hereof and indemnification under *Section 15.3* hereof.

15.9 Standard of Conduct. The determination that any Covered Person has met or has not met the applicable standard of conduct required by *Section 15.2* or *Section 15.3* hereof may be made by a finding, judgment, order or decree of any court or other presiding authority in any Proceeding, whether upon application of the Company or of such Covered Person (regardless of whether the Company opposes such application).

15.10 Nonexclusive Remedy. The rights and remedies under this *Article 15* shall not be deemed or considered exclusive of or (in any way) diminish, limit, restrict, alter or otherwise adversely affect any other right to exculpation or to indemnification or to any other right or remedy available to any Covered Person under any agreement, any vote of the Members, any applicable law or otherwise, both with respect to acts or omissions in an official capacity and acts or omissions in a separate capacity while holding such official capacity.

15.11 Survival of Rights. The rights and remedies under this *Article 15* shall survive and continue for

any Person which has ceased to be a Covered Person for any act committed or omission made while a Covered Person, and shall inure to the benefit of the successors and assigns, heirs, executors, and administrators of such Covered Person.

15.12 Amendments. Any repeal or modification of this *Article 15* shall not adversely affect any right or remedy of a Covered Person pursuant to this *Article 15*, including the right to indemnification or to the advancement of expenses of the Covered Person existing at the time of such repeal or modification with respect to any act or omission occurring prior to such repeal or modification.

ARTICLE 16 - AMENDMENTS

16.1 Agreement May Be Modified. This Agreement may be modified as provided in this *Article 16* (as the same may, from time to time, be amended). No Member shall have any vested rights in this Agreement which may not be modified through an amendment to this Agreement in accordance with this *Article 16*.

16.2 Amendment or Modification of Agreement. This Agreement may be amended or modified from time to time only by a written instrument adopted by the Majority Vote of Membership Shares; *provided, however*, that any amendment that would change a required voting percentage for approval of any matter or a Member's voting rights or any amendment that would alter the interest of one or more Members in Net Profits, Net Losses, similar items or any Company Distributions shall require the affirmative vote of all Members then entitled to vote.

ARTICLE 17 - CONFIDENTIALITY

17.1 Treatment of Confidential Information. Each Member acknowledges that during the term of this Agreement, it may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company, including, but not limited to, information concerning financial instruments, technical research data and literature, investment and trading models and techniques, records, and all other know-how, trade marks, trade secrets, business plans and methods, expansion plans, strategic plans, marketing plans, contracts, or other business documents which the Company treats as confidential and proprietary trade secrets (collectively "Confidential Information"). Each Member expressly agrees that all such Confidential Information is and shall remain the property of the Company; and no Member shall use such Confidential Information in any manner detrimental to the best interests of the Company, including but not limited to activities that are competitive with the Company, nor shall any such Confidential Information be disclosed to any third party without the express written consent of the Members. Upon expiration or other termination of a Member's interest in the Company, that Member may not take or use any of the Confidential Information belonging to the Company unless specifically authorized by this Agreement or otherwise agreed in writing by the Members, and that Member shall promptly return to the Company all Confidential Information in that Member's possession or control.

17.2 Remedies. The parties hereto acknowledge and agree that a breach of the covenants or restrictions set forth in this *Article 17* will cause irreparable damage to the Company, the exact amount of which will be difficult to ascertain, and the remedies at law for any such breach will be inadequate. Accordingly, each Member agrees that if it breaches any such covenants or restrictions, then the Company shall be entitled to injunctive relief and any other available equitable or legal relief. The foregoing remedies shall be cumulative and non-exclusive, and in addition to any and all other remedies that may be available to the Company, and each Member hereby waives any security or bond requirement in connection with the Company or such other Member(s), as applicable, obtaining such injunctive or other equitable relief. The provisions of this *Article 17* shall survive the termination of this Agreement.

17.3 Applicability. For purposes of this *Article 17*, "Confidential Information" does not include information that: (a) is or becomes generally available to the public through no breach of this Agreement; (b) is already known to the receiving party at the time of disclosure, as evidenced in writing; (c) becomes known to the receiving party by disclosure from a third party who has a lawful right to disclose the information; or (d) is independently developed by employees or agents of the Receiving Party who the Receiving Party can demonstrate did not have access to Confidential Information.

ARTICLE 18 - DEFINITIONS

18.1 Definitions. For purposes of this Agreement, unless the context clearly indicates otherwise, capitalized terms used in this Agreement shall have the meanings given such terms below:

"Act" shall mean the Idaho Limited Liability Company Act, Idaho Code §§ 53 *et seq.*, and all amendments to the Act.

"Additional Member" shall mean a Member, other than an Initial Member or a Substitute Member, who has acquired a Membership Interest (including both Economic Rights and Management Rights) from the Company after the date of this Agreement, as shown on the books and records of the Company and on **Schedule 1** hereto.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) The Capital Account shall be increased by any amounts such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the next to the last sentences of sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(b) The Capital Account shall be decreased by the items described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Affiliate" shall mean, with respect to any Person, any of the following: (a) any person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting interests of such Person: (c) any officer, director or manager of such Person; (d) any Person that is an officer, director, manager, trustee or holder of 10% or more of the voting interests of any Person described in clauses (a) through (c) of this definition. For purposes of this definition, the term "controls," "is controlled by" or "is under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this Operating Agreement including all amendments adopted in accordance with this Agreement and the Act, and together with any exhibits, schedules, attachments or annexes hereto from time to time, as the context requires.

"Articles" shall mean the Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the Secretary of State of Idaho.

"Assignee" shall mean an owner of Economic Rights who has not been admitted as a Substitute Member, including an owner of Economic Rights pursuant to a Transfer permitted under *Article 12* or an owner of Economic Rights of a Member whose membership in the Company has been terminated by reason of an Event of Dissociation.

"Bankruptcy" shall mean, with respect to any Person, a Voluntary Bankruptcy or an Involuntary Bankruptcy.

"Business Day" shall mean any day other than Saturday, Sunday or a legal holiday observed in the State of Idaho.

"Capital Account" shall mean the account maintained for a Member or Assignee determined in accordance with *Article 10*.

"Capital Contribution" shall mean, with respect to any Member, the total amount of money or other Property contributed to the capital of the Company by such Member pursuant to *Article 9*.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provisions of succeeding law.

"Commitment" shall mean the obligation of a Member or Assignee to make a Capital Contribution.

"Company" shall mean **The Source Store, LLC**, an Idaho limited liability company formed under this Agreement, and any successor.

"Company Minimum Gain" shall mean the same as "partnership minimum gain" as set forth in section 1.704-2(b)(2) and 1.704-2(d) of the Regulations.

"Company Property" shall mean any Property owned by the Company.

"Contributing Members" shall mean Members making Capital Contributions as a result of the failure of a Delinquent Member to perform a Commitment, as described in *Section 9.4*.

"Damages" shall mean any loss, damage, injury, reduced value, liability, claim, demand, settlement, judgment, award, fine, penalty, tax, fee (including any legal fees, costs and disbursements, expert fees, account fees or advisory fees), charge, cost (including any cost of investigation or enforcement costs) or expense of any nature, net of insurance recoveries.

"Default Interest Rate" shall mean the higher of the legal rate or the then-current prime rate quoted by U.S. Bank, N.A. in the jurisdiction of the Principal Office plus three percent (3%).

"Delinquent Member" shall mean a Member or Assignee who has failed to meet the Commitment of that Member or Assignee.

"Disabling Conduct" shall mean any act or failure to act which (a) constitutes gross negligence, willful conduct or fraud, (b) is taken in bad faith, (c) involves a knowing violation of law, or (d) is done in reckless disregard of the duties involved in the conduct of one's position.

"Distribution" shall mean money or other Property, from any source, distributed to the Members and Assignees by the Company.

"Economic Rights" shall mean a Member's or Assignee's share of the Net Profits, Net Losses or any other items allocable to any period and Distributions of Company Property pursuant to the Act and this Agreement, but shall not include any Management Rights.

"Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association or any foreign trust or foreign business organization.

"Financing Event" shall mean a transaction or series of transactions whereby the Company or a successor entity to the Company undertakes or effects (i) an initial public offering of its equity securities under the

Securities Act of 1933 Act, or (ii) a merger, consolidation, acquisition, sale of all or substantially all of its assets, or other similar business arrangement (including, without limitation the generality of the foregoing, any transaction in which the Members would be merged or consolidated with or into one or more other entities with the intention that such entity or entities undertake or effect an initial public offering of its or their equity securities, a subsequent merger, consolidation, acquisition, sale of all or substantially all of its or their assets, or other similar business arrangement) the principal intended and articulated purpose of which is to provide the Members and/or their respective equity owners with liquidity, whether through ownership of a publicly traded security or otherwise.

"Fiscal Year" shall mean (i) the period commencing on the date on which the Articles are filed with the Idaho Secretary of State and ending on December 31, 2003, (ii) any subsequent 12-month period commencing on January 1 and ending on December 31, or (iii) any portion of the period described in clause (ii) for which the Company is required to allocate Net Profits, Net Losses or other items of Company income, gain, loss or deduction pursuant to *Article 10*.

"GAAP" shall mean U.S. generally accepted accounting principles in effect from time to time.

"Governmental Body" shall mean any (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or entity and any court or other tribunal).

"Immediate Family" shall mean a Member's spouse, children (including natural, adopted and stepchildren), and lineal ancestors or descendants.

"Initial Members" shall mean Hodge and Prehn.

"Interested Member" shall mean any Member that has more than a *de minimis* pecuniary interest in a matter submitted to the Members for a vote, other than any interest resulting from such Person's status as a Member.

"Involuntary Bankruptcy" shall mean, with respect to any Person, without the consent or acquiescence of such Person, the entering of an order for relief or approving a petition for relief or reorganization or any other petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other similar relief under any present or future bankruptcy, insolvency or similar statute, law or regulation, or the filing of any such petition against such Person, which petition has not been dismissed within sixty (60) days, or, without the consent or acquiescence of such Person, the entering of an order appointing a trustee, custodian, receiver or liquidator of such Person or of all or any substantial part of the property of such Person, which order has not been dismissed within sixty (60) days.

"Manager" means the person elected as the Manager of the Company from time to time in accordance with the provisions of *Section 6.7*. The Manager need not be a Member of the Company.

"Majority Vote of Membership Shares" shall mean Member or Members having Membership Shares in excess of one-half of the total number of issued and outstanding Membership Shares of all the Members entitled to vote on, consent to, or approve a particular matter. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority Vote of Membership Shares.

"Majority Vote of the Remaining Membership Shares" shall mean Member or Members having Membership Shares in excess of one-half of the total number of Membership Shares of all the Members entitled to vote on, consent to, or approve a particular matter, *excluding* any Interested Member(s). Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority Vote of the Remaining Membership Shares. A Member who has Transferred that Member's entire Membership Interest to an Assignee, but has not

ceased to be a Member as provided herein, shall be considered a Member for the purpose of determining a Majority Vote of the Remaining Membership Shares.

"Management Right" shall mean the right to exercise management control over the Company, including the rights to information and to consent or approve actions of the Company.

"Member" shall mean an Initial Member, Substitute Member or Additional Member, including, unless the context expressly indicates to the contrary, an Assignee.

"Membership Interest" shall mean the entire ownership interest of a Member in the Company at a particular time, including a Member's Economic Rights, and the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to company with the terms and provisions of this Agreement.

"Membership Share" shall mean a portion of a Membership Interest in the Company held by a Member hereof, including any and all benefits to which the holder of such Membership Share may be entitled as provided in this Agreement, and all obligations of the holder of such Membership Share to comply with the terms and provisions of this Agreement.

"Net Cash from Operations" shall mean with respect to any fiscal period, all cash receipts received by the Company from operations in the ordinary course of business, including, without limitation, income from invested Reserves, but after deducting Operating Cash Expenses, debt service and any other payments made in connection with any loan to the Company or other loan secured by a lien on Company assets, capital expenditures of the Company, and amounts set aside for the creation of additional Reserves. Net Cash from Operations does not include Capital Contributions or the proceeds of any borrowings by the Company.

"Net Loss" means the net loss generated by the Company with respect to a Fiscal Year, as determined for Federal income tax purposes; *provided*, that such loss shall be decreased by the amount of all income during such period that is exempt from Federal income tax and increased by the amount of all expenditures during such period that are not deductible for Federal income tax purposes and that do not constitute capital expenditures.

"Net Profit" means the net income generated by the Company with respect to a Fiscal Year, as determined for Federal income tax purposes; *provided*, that such income shall be increased by the amount of all income during such period that is exempt from Federal income tax and decreased by the amount of all expenditures during such period that are not deductible for Federal income tax purposes and that do not constitute capital expenditures.

"Nonrecourse Deductions" shall have the meaning set forth in section 1.704-2(b)(1) of the Regulations.

"Operating Cash Expenses" shall mean with respect to any fiscal period, the amount of cash disbursed in the ordinary course of operations of the Company during such period, including, without limitation, all cash expenses, such as insurance premiums, taxes, repair and maintenance expenses, and legal and accounting fees. Operating Cash Expenses shall not include expenditures paid out of Reserves.

"Organization Expenses" shall mean those expenses incurred in the organization of the Company including the costs of preparation of this Agreement and Articles, and as defined for purposes of section 709(a) of the Code.

"Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of each such Person where the context so permits.

"Principal Office" shall mean **1800 Broadway Avenue, Boise, Idaho 83706**, or such other principal office of the Company as determined by the Members pursuant to *Section 1.4* hereof.

"Property" shall mean any property, real or personal, tangible or intangible (including goodwill), including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Regulations" shall mean, except where the context indicates otherwise, the permanent, temporary, proposed, or proposed and temporary regulations of the U.S. Department of the Treasury under the Code, as such regulations may be lawfully changed from time to time.

"Representatives" shall mean a Person's officers, directors, employees, managers, trustees, agents, attorneys, accountants, advisors and representatives.

"Reserves" shall mean with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which may be maintained by the Company for working capital and to pay taxes, or other costs or expenses of the Company.

"Sharing Ratio" shall mean with respect to any Member or Assignee, a fraction (expressed as a percentage), the *numerator* of which is the total of the Member's or Assignee's Membership Shares and the *denominator* is the total of all Membership Shares of all Members and Assignees as such totals exist from time to time.

"Subscription Agreement" shall mean the Agreement between an Additional Member and the Company described in *Section 13.2* of the Agreement.

"Substitute Member" shall mean an Assignee who has been admitted to all of the rights of membership pursuant to this Agreement.

"Transfer" shall mean with respect to any Membership Interest in the Company, or part thereof, as a noun, any voluntary or involuntary assignment, sale or other transfer or disposition of such Membership Interest or part thereof (which shall include, without limitation and notwithstanding any provision of the Act otherwise to the contrary, a pledge, or the granting of a security interest, lien or other encumbrance in or against, any Membership Interest in the Company, or part thereof) and, as a verb, voluntarily or involuntarily to assign, sell or otherwise transfer or dispose of such Membership Interest or part thereof.

"Voluntary Bankruptcy" shall mean, with respect to any Person, the inability of such Person generally to pay its debts as such debts become due, or an admission in writing by such Person of its inability to pay its debts generally or a general assignment by such Person for the benefit of creditors; the filing of any petition or answer by such Person seeking to adjudicate it a bankrupt or insolvent, or seeking for itself any liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of such Person or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking, consenting to or acquiescing in the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property; or corporate action taken by such Person to authorize any of the foregoing.

18.2 Other Defined Terms. The following terms shall have the meanings defined for such terms in the Sections set forth below:

Term	Section
"Annual Budget"	3.4
"Claim"	15.1(c)
"Company Exercise Notice"	12.4(c)
"Company Exercise Period"	12.4(c)

"Confidential Information"	17.1
"Contributing Member"	9.4
"Covered Person"	15.1(a)
"Delinquent Member"	9.4
"Dissolution Event"	14.1
"Event of Dissociation"	13.6
"Exercise Notice"	12.4(c)
"Interest"	12.1
"Liquidator"	14.2
"Member Exercise Notice"	12.4(c)
"Member Exercise Period"	12.4(c)
"Membership Share Certificates"	5.4
"1933 Act"	5.5
"Notice"	20.8
"Pass-Thru Partner"	3.8
"Permitted Transfer"	12.2(a)
"Prime Rate"	9.5
"Proceeding"	15.1(c)
"Regulatory Allocations"	10.2(c)
"Remaining Members"	12.4(c)
"Right of First Refusal"	12.4(a)
"Secretary of State"	1.1
"Target Interest"	12.4(b)
"Tax Matters Partner"	3.8
"Term"	1.6
"Transfer Notice"	12.4(b)
"Transferor"	12.1

18.3 **Construction.** Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter. Except as otherwise provided in this Agreement, all references to Articles and Sections refer to Articles and Sections of this Agreement, and all references to Schedules are to Schedules attached to this Agreement, each of which is incorporated in and made a part of this Agreement for all purposes.

ARTICLE 19 – DISPUTE RESOLUTION

19.1 **Scope.** The procedures provided by this *Article 19* shall apply to any dispute which arises between the Members with respect to the negotiation, execution, performance, interpretation or termination of this Agreement, *provided, however*, that the terms of this Article shall not apply unless and until a Member shall have given written notice to the other invoking this *Article 19*. Such notice shall specify in reasonable detail the dispute to which it is intended to apply. Such dispute is hereinafter referred to as the "Noticed Dispute;" and the effective date of delivery of such notice is referred to as the "Notice Date."

19.2 **Stay of Litigation; Tolling.** Upon notice given pursuant to *Section 19.1*, the Members and the Company shall refrain from commencing litigation against the other or any of such other's Affiliates in respect of the Noticed Dispute, and each of them shall suspend prosecution or defense of any already pending litigation arising out of the Noticed Dispute. Such stay shall remain in effect until the earlier of (i) three(3) months after the Notice Date, (ii) completion of the dispute resolution process without settlement of the Noticed Dispute, or (iii) written agreement by the parties to discontinue the dispute resolution process. If any litigation is pending at the time of the Notice Date, the parties shall each take appropriate steps, including all necessary filings with the court having jurisdiction over such litigation, to suspend such litigation for the period of the stay provided for in this *Section 19.2*. Notwithstanding the foregoing, the stay of litigation provided for in this *Section 19.2* shall not apply to:

(a) Any litigation efforts pursued by either party to avoid irreparable injury arising from the Noticed Dispute and the defense thereof by the other party;

(b) Any litigation efforts made in connection with litigation which is pending on the Notice Date which are necessary to meet court-imposed schedules which the court is unwilling to stay or delay pursuant to this Section (following request therefor by the parties) pending the parties' efforts to resolve the Noticed Dispute; and

(c) Any litigation efforts that are necessary, in the opinion of counse, for either party to protect the interests in such litigation

In the event litigation is not stayed pursuant to the provisions of any of the preceding subparagraphs (a), (b) or (c), the parties shall nonetheless use the dispute resolution process provided for herein in an effort to resolve the Noticed Dispute or so much thereof as may be practical to resolve, given the claims and positions of third parties. Such action shall be taken while simultaneously continuing the litigation.

During the prendency of the stay of litigation provided for in this *Section 19.2*, all statutes of limitations which may be applicable to the Noticed Dispute shall be tolled as between or among the parties and their respective Affiliates.

19.3 **Negotiation.** Within ten (10) days after the Notice Date, each Member involved in the dispute shall deliver to the other Members so involved a written statement of its position with respect to the Noticed Dispute. Within fifteen (15) days after the Notice Date, all Members involved in the dispute and the Manager shall meet and conduct good faith discussions and negotiations in an attempt to resolve the Noticed Dispute in an amicable and cooperative manner. If the parties are unable to settle the Noticed Dispute by the 30th day following the Notice Date, they shall mutually appoint a neutral third-party mediator. If the parties are unable to agree upon the neutral third-party mediator by the 30th day following the Notice Date, each Member involved in the dispute shall appoint one

neutral mediator, and the appointed mediators shall then appoint a third neutral mediator who shall attempt to mediate the dispute in accordance with *Section 19.4* below.

19.4 Mediation. Within fifteen (15) days after appointment of the mediator, each party shall submit a written statement to the mediator and to the other Member(s) involved in the dispute, and each party may, within ten (10) days after receipt of the other party's statement, submit to the mediator and the opposing party or parties, one rebuttal statement. Within twenty (20) days after submission of the rebuttal statements, on a date and at a place in Boise, Idaho set by the mediator, the parties in dispute shall meet with the mediator to negotiate and resolve the Noticed Dispute. If the parties are unable to reach a settlement of the Noticed Dispute, the mediator shall, within fifteen (15) days thereafter, deliver in writing to each party a recommended settlement of the Noticed Dispute. Within five (5) days after receipt of the mediator's recommendation, the parties shall meet at a time and place in Boise, Idaho set by the mediator and make a final attempt to resolve the Noticed Dispute. If they are unable to do so, the dispute resolution process shall be deemed terminated, and any stay of litigation shall also terminate.

19.5 Fees and Expenses. The parties shall each cover their own costs and fees associated with the dispute resolution process provided for in this Agreement. The fees and expenses of the neutral mediator(s) shall be divided equally by the parties.

19.6 Scope of Obligation; Specific Performance. The parties agree to use the settlement procedures outlined above in a good faith effort to provide for a speedy and economical means of resolving disputes. However, the parties agree that no party shall be in default or in breach hereof for failure to adhere to any of the procedures outlined above, *except that*: (i) compliance with the procedures hereof shall be a condition precedent to any party exercising its rights under *Section 19.7* below, and (ii) any party may obtain an order of specific performance in respect of the other part(ies)' obligation under *Section 19.2*. In addition, nothing herein shall be construed to require any party to agree to any particular settlement of a dispute. It is the intention of the parties that this Agreement be purely procedural in nature. Its purpose is to ensure that the possibilities of settlement are fully explored by the parties with the aid of a neutral mediator before either party resorts to or continues the prosecution of litigation.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

20.1 Entire Agreement. This Agreement, together with all schedules attached hereto from time to time, represents the entire agreement among all the Members and between the Members and the Company relating to the subject matter hereof, and supersedes all prior contracts, agreements and understandings among them. No course of prior dealings among the Members shall be relevant to supplement or explain any term used in this Agreement.

20.2 Rights of Creditors and Third Parties. This Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their successors and permitted assigns. This Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under this Agreement, any Subscription Agreement, or any other agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

20.3 Headings. The boldface headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

20.4 Additional Documents. Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions or intentions of this Agreement.

20.5 Successors; Counterparts. Subject to *Articles 12* and *13*, this Agreement (a) shall be binding as to the executors, administrators, estates, heirs and legal successors and permitted assigns, or nominees or

representatives, of the Members and (b) may be executed in several counterparts, with the same effect as if the parties executing the several counterparts had all executed one and the same agreement.

20.6 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Idaho (without giving effect to conflicts of laws principles).

20.7 Waiver.

(a) No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

20.8 Notices. Except as otherwise provided in this Agreement, all notices, requests and other communications to any Member or Assignee (each, a "Notice") shall be in writing (including telecopier or similar writing) and shall be given to such Member (and any other Person designated by such Member) at its address or telecopier number set forth in the Membership Registry of the Company or such other address or telecopier number as such Member may hereafter specify for the purpose of notice. Each such Notice shall be effective (a) if given by telecopier, when transmitted to the number specified pursuant to this *Section 20.8* and the appropriate confirmation is received, (b) if given by mail, when deposited in the United States mail, addressed to the Member, with postage prepaid, or (c) if given by any other means, when delivered at the address specified pursuant to this *Section 20.8*.

20.9 Waiver of Partition. Each of the Members hereby irrevocably waives any and all rights that such Member may have to maintain an action for partition of the Company's Property.

20.10 Survival. All indemnities and reimbursement obligations made pursuant to this Agreement shall survive dissolution and liquidation of the Company until the expiration of the longest applicable statute of limitations (including extensions and waivers) with respect to the matter for which a party would be entitled to be indemnified or reimbursed, as the case may be.

20.11 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected, and shall continue to be valid and enforceable to the fullest extent permitted by law.

20.12 Counsel. The Members ratify the Company's retention of Hoagland, Dominick & Hicks, Attorneys At Law, PLLC (which is representing the Company, and not any Member) in connection with the formation and organization of the Company. The Members have been given the opportunity to retain other counsel to represent their separate individual interests in connection with such matter.

IN WITNESS WHEREOF, the Members have signed this Operating Agreement of The Source Store, LLC, effective as of the date first set forth above.

INITIAL MEMBERS:

Michael L. Hodge II

Donnelly Prehn

Schedule 1

THE SOURCE STORE, LLC

MEMBER REGISTRY

Name of Member	Capital Contribution	Membership Shares	Sharing Ratio
Michael L. Hodge II	$33,000 (1)	85,000 (2)	85.0%
Donnelly Prehn	$10,000 (1)	15,000 (2)	15.0%

(1) The initial Capital Contribution of Mr. Hodge was in the form of a contribution of the assets of "The Source," a sole proprietorship of which Mr. Hodges was the owner; the Members agree that Mr. Hodge's Capital Account will be credited with the fair value of such assets, as set forth above. Mr. Prehn's initial Capital Contribution was in the form of partial conversion of a note with the Company.

Schedule 2

THE SOURCE STORE, LLC

OFFICERS

Name	Office
Michael L. Hodge II	President and Chief Executive Officer
Michael L. Hodge II	Secretary

EXHIBIT B

TO

Affidavit of Michael O. Roe in Support of Plaintiffs' Memorandum of Attorney Fees and Costs

24853.0000 - Donnelly Prehn and Dwight Bandak v. The Court Store, LLC, et al.
Ada County Case No. CV OC 2012-07728 -- Attorney Fees

Date	Initials	Hours	Amount	Fee Description
3/12/2012	MOR	0.2	45.00	Receive e-mail from D. Prehn and begin to review questions;
3/14/2012	MOR	0.7	157.50	Complete review and analysis of D. Prehn questions; prepare for phone call; phone call to D. Prehn regarding M. Hodges and potential dissolution of company and implications for D. Prehn; review portions of Idaho statute; review portion of The Source operating agreement;
3/30/2012	MOR	0.8	180.00	Review notes and file; review portions of prior e-mail; phone call to D. Prehn regarding dissolution and related accounting strategies;
4/2/2012	MOR	0.9	202.50	Review prior e-mail and communications; phone call to D. Prehn regarding issues related to dissolution of limited liability company; receive and review e-mail from D. Prehn regarding strategy for upcoming conference call;
4/4/2012	MOR	0.9	202.50	Receive and review e-mail from D. Prehn; review option agreement attached to e-mail; review voicemail from D. Prehn; phone call to D. Prehn regarding dissolution; receive and review additional e-mail from D. Prehn, including proposed distribution of cash; receive and review third e-mail from D. Prehn regarding attached balance sheet;
4/5/2012	MOR	1.5	337.50	Prepare for meeting; review notes and file; meet with D. Prehn regarding recent communications, strategy for response and upcoming discussion of dissolution;
4/6/2012	MOR	1.2	270.00	Receive and review draft response from D. Prehn; generate redlined proposed changes and e-mail to D. Prehn for review; receive and review e-mails from D. Prehn and e-mail strings between M. Hodge and other members of The Source; exchange additional e-mails with D. Prehn strategy for upcoming conference call;
4/9/2012	MOR	1.8	405.00	Review notes and file; prepare for phone call; phone call to D. Prehn; review e-mails and attachments; second phone call to D. Prehn; review additional e-mail and attachments; third phone call to D. Prehn regarding dissolution of The Source and strategy for negotiation with M. Hodge; receive and review ownership proposal;

Date	Initials	Hours	Amount	Fee Description
4/11/2012	MOR	0.7	157.50	Receive and review e-mail from D. Prehn regarding board meeting; review prior e-mails from M. Hodge; receive and review additional e-mail from D. Prehn and prior e-mails from M. Hodge;
4/12/2012	MOR	1.3	292.50	Lengthy phone call to D. Prehn regarding facts and legal theories; review e-mails and e-mail strings from and among clients and opposition; receive and review e-mail summary of April 9 conference call;
4/13/2012	MOR	2.8	630.00	Review e-mails; review notes and file; phone call to D. Prehn; prepare for subsequent call; conference call with D. Prehn and D. Bandak; follow up on issues raised by client during conference call; receive and review final e-mail and summary from D. Prehn regarding April 13 conference call with M. Hodge and M. Baldner; prepare short e-mail to D. Prehn;
4/16/2012	MOR	3.0	675.00	Review notes and file; prepare for call; conference call with D. Prehn and D. Bandak regarding negotiations and strategy going forward; receive and review e-mail from D. Prehn; review attached e-mail from M. Hodge delivered on Sunday, April 15; review summary from D. Prehn of M. Hodge's changing position; receive and review e-mail and notes from D. Prehn; review attached source spreadsheet and financial performance information; receive and review additional e-mail from M. Hodge and vote from C. Claiborne; review additional numerous e-mails and attachments from D. Prehn; receive and review draft response to M. Hodge and D. Prehn; prepare e-mail to D. Prehn regarding draft; receive and review open orders report from D. Prehn; review D. Bandak's changes to draft e-mail response from D. Prehn to M. Hodge; prepare e-mail to D. Prehn and D. Bandak regarding cell phone accounts, etc.;
4/17/2012	MOR	0.9	202.50	Prepare for call; conference call with D. Prehn and D. Bandak regarding partnership or LLC dispute; receive and review e-mail and attached proposed 2011 capital distributions from M. Hodge;
4/18/2012	MOR	0.5	112.50	Meeting with associate attorney regarding causes of action and potential motion for injunctive relief;
4/18/2012	MJM	2.9	449.50	Conference with Mike Roe regarding potential complaint or injunctive relief; research and analyze underlying facts to determine propriety of initiating litigation;

Date	Initials	Hours	Amount	Fee Description
4/19/2012	MJM	2.4	372.00	Research and analyze issues surrounding bring dual derivative and direct actions against The Source Store, LLC;
4/19/2012	MOR	2.1	472.50	Work on litigation strategy; conference with associate attorney regarding causes of action; receive and review email from D. Prehn regarding timing; receive and review second e-mail from D. Prehn regarding distribution checks; receive and review third e-mail from D. Prehn regarding purchase orders; receive and review e-mail from D. Prehn with attached non-competition agreement signed by M. Hodge and D. Prehn; receive and review e-mail memorandum from D. Prehn regarding possible items for inclusion in Complaint; prepare e-mail to D. Prehn regarding open issues;
4/20/2012	MOR	1.4	315.00	Receive and review e-mails and attachments from client; conference with associate attorney regarding contents of Complaint; receive and review e-mail from D. Bandak regarding timing; receive and review e-mail from D. Prehn regarding option items; review April 20 e-mail from M. Hodge; analyze back pay and loan issues;
4/20/2012	MJM	1.4	217.00	Analyze memorandum prepared by client regarding potential causes of action and research Idaho law regarding potential causes of action;
4/22/2012	MOR	0.8	180.00	Receive and review additional e-mails and information from D. Prehn; prepare voicemail to D. Prehn regarding status of litigation strategy; receive and review e-mail from D. Prehn regarding conversation with J. Arp; receive and review e-mail regarding 2008 Nissan Titan Crew Cab;
4/23/2012	MOR	1.7	382.50	Prepare for conference call; conference call with D. Prehn and D. Bandak; continue work on litigation strategy;
4/23/2012	MJM	4.5	697.50	Review file and draft factual background of complaint;
4/24/2012	MJM	8.5	1,317.50	Draft separate causes of action for complaint;
4/24/2012	MOR	1.1	247.50	Continue work on Complaint; receive and review lengthy e-mail from D. Prehn regarding non-competition and confidentiality agreements; receive and review additional e-mail from D. Prehn regarding factual allegations and history of company;
4/25/2012	MJM	2.5	387.50	Revise and finalize complaint;
4/26/2012	MJM	0.6	93.00	Conference regarding filing complaint;

Date	Initials	Hours	Amount	Fee Description
4/26/2012	MOR	2.3	517.50	Review and revise draft Complaint; finalize draft Complaint and e-mail to clients for review; review portions of underlying documents; conference with associate attorney regarding restraining order and related matters; receive and review comments from D. Prehn on draft Complaint; exchange e-mails with D. Prehn regarding revisions to Complaint; receive and review e-mail and comments from D. Bandak on draft Complaint;
4/27/2012	MOR	2.5	562.50	Prepare for conference call; review portions of draft Complaint; review prior e-mails; conference call with D. Prehn and D. Bandak; finalize Complaint and Summons; arrange for filing with Ada County court; follow up phone call to D. Prehn regarding filing of Complaint;
4/27/2012	MJM	3.0	465.00	Teleconference with clients regarding complaint and strategy; finalize for filing the complaint;
4/29/2012	MJM	6.8	1,054.00	Draft brief in support of application for temporary restraining order;
4/30/2012	MJM	2.6	403.00	Revise and finalize application for temporary restraining order and all supporting materials, including revision of brief;
4/30/2012	MJM	2.8	434.00	Draft application for temporary restraining order, affidavit of D. Prehn, affidavit of M. Roe, and temporary restraining order;
4/30/2012	MOR	2.3	517.50	Conference with counsel; phone call to D. Prehn review Idaho Procedural Rules regarding temporary restraining orders and preliminary injunctions; work on draft TRO documents including brief and affidavits; phone call to D. Prehn regarding timing of motion for injunctive relief; receive and review e-mail and attachments regarding 2% rebate from bodybuilding.com; receive and review e-mail from D. Prehn regarding discovery efforts, including depositions; receive and review e-mail from D. Prehn and M. Hodge regarding purchase of company vehicle; revise draft TRO/preliminary injunction documents; receive and review D. Prehn's proposed changes to his affidavit; receive and review statement of dissolution filed by Source 1;

Date	Initials	Hours	Amount	Fee Description
5/1/2012	MOR	4.6	1,035.00	Phone call to M. Baldner (.3); review notes and file (.3); review Operating Agreement and related documents (.4); second phone call to M. Baldner (.3); second phone call to D. Prehn (.3); conference call with D. Bandak and D. Prehn (.6); continue work on issues raised by clients and M. Baldner in connection with ongoing partnership dispute (.5); follow up on service of Complaint on defendants (.2); confirm with Tri-County Process Serving (.1); arrange for delivery of copy of filed Complaint to M. Baldner (.1); exchange e-mails with M. Baldner regarding retention of counsel for The Source, LLC (.2); confirm assignment of Judge Owen's assignment to case (.2); prepare email/memorandum to M. Baldner regarding negotiation of interim agreement to obviate need for motion for injunctive relief (.4); exchange additional e-mails with M. Baldner (.3); receive and review additional e-mails from M. Hodge and attachments, including profit and loss statement balance sheet and related documentation (.4); receive and review lengthy e-mail memorandum from D. Prehn regarding analysis of open purchase orders (.2); receive and review additional e-mail from D. Prehn regarding books and records and related matters (.2);
5/2/2012	MOR	2.4	540.00	Phone call to D. Prehn regarding status of negotiation of interim agreement (.4); review notes and file (.2); review portions of Complaint (.3); phone call to D. Copple regarding possible representation of Source 1 (.2); review and revise rule 30(b)(6) depositions for Source 1 and Source 2 and arrange for service of depositions (.3); draft response to M. Hodge interim settlement offer (.4); receive and review further e-mail directions from clients regarding interim settlement versus motion for injunctive relief (.2); receive and review proposed response letter to M. Hodge from D. Prehn (.2); receive and review additional e-mail communication between clients and M. Hodge (.4); prepare follow up response to M. Hodge regarding potential interim settlement (.2);
5/2/2012	MJM	2.2	341.00	Revise and finalize temporary restraining order papers and participate in teleconference with clients;

Date	Initials	Hours	Amount	Fee Description
5/3/2012	MOR	7.3	1,642.50	Multiple phone calls to D. Prehn (1.5); review e-mails from D. Prehn regarding litigation strategy and injunction in particular (.3); receive and review list of potential witnesses and expected testimony from D. Prehn (.2); receive, review, analyze and revise Temporary Restraining Order, Affidavit of D. Prehn, Memorandum in Support of Application for Temporary Restraining Order, Affidavit of Counsel in Support Application for Temporary Restraining Order and Application for Temporary Restraining Order (1.3); complete all pleadings and related documentation related to Application for Temporary Restraining Order and Preliminary Injunction (1.2); finalize all Temporary Restraining Order/Preliminary Injunction documents (.5); file pleadings (.5); meet with Judge Lynn Norton regarding Application for Temporary Restraining Order (.5); receive and review Order on Application (.3); arrange for May 8, 2012 hearing (.4); phone call to D. Prehn and D. Bandak regarding Application for Temporary Restraining Order (.4); arrange for circulation of documents to M. Baldner, M. Hodge, M. Brown, C. Claiborne and clients (.2);
5/4/2012	MOR	3.2	720.00	Phone call to M. Baldner (.2); phone call to D. Prehn (.3); draft, revise and finalize spoliation letter and arrange for delivery to each defendant (.3); review case law regarding upcoming hearing on Application for Temporary Restraining Order and Preliminary Injunction (.5); exchange voicemails with M. Baldner regarding TRO (.2); second phone call to M. Baldner (.3); receive and review e-mails between M. Baldner and M. Hodge regarding TRO application (.2); receive and review multiple e-mails and attachments from M. Hodge (.5); analyze issues related to proposed auction process (.4); receive and review e-mail from D. Prehn and explanation of M. Hodge's billed and booked spreadsheets (.2); prepare e-mail to D. Prehn and D. Bandak regarding role of M. Baldner in upcoming litigation (.1);
5/4/2012	MJM	0.2	31.00	Analyze evidence preservation issues; review e-mails from Don Prehn;

Date	Initials	Hours	Amount	Fee Description
5/7/2012	MOR	5.1	1,147.50	Phone call to D. Prehn (.2); review TRO injunction documents (.5); review e-mails (.3); review factual information (.5); prepare for hearing on motion for temporary restraining order and preliminary injunction (1.0); receive and review additional e-mails and attachments from M. Hodge, including those regarding intellectual property, inventory and inventory report (.6); receive and review additional multiple e-mails and attachments from D. Prehn regarding litigation and injunction matters in particular (.5); receive and review M. Hodge e-mail and attachment regarding domestic major project list (.2); prepare for meeting (.3); meet with D. Prehn (.6); draft and revise Second Affidavit of Donnelly Prehn in Support of Application for Temporary Restraining Order and arrange for filing with district court (.4);
5/8/2012	MOR	4.2	945.00	Complete preparation for hearing (.4); phone call to D. Prehn (.1); meet shortly with D. Prehn prior to hearing (.2); attend hearing on Application for TRO and Preliminary Injunction (1.3); meet with D. Prehn regarding follow up issues (.2); begin drafting proposed Order (.5); review underlying statute and case law for stipulated orders in this context (.3); review prior e-mail and spreadsheet information from M. Hodge for use in determining optimal auction process (.3); complete initial draft of Order re: Dissolution of The Source Store, LLC and Related Matters and circulate to clients for review and comment (.6); exchange e-mails with D. Prehn regarding order on dissolution (.3);
5/9/2012	MOR	4.9	1,102.50	Review notes and file (.2); review pleadings (.2); prepare for conference call (.2); conference call with D. Prehn and D. Bandak regarding proposed Order and related matters (.8); review and revise proposed Order multiple times (2.2); complete initial draft Order and forward to M. Baldner and E. Guerricabeitia for review by defendants (.3); receive and review e-mail and attached customer contact report from M. Hodge (.2); exchange e-mails with D. Prehn regarding Source 1 matters (.3); receive and review e-mail from E. Guerricabeitia regarding proposed order (.2); receive and review additional e-mails and attachments from D. Prehn regarding Hodge plans, particularly with respect to new shaker mold (.2); receive and review e-mail from D. Bandak regarding 2% rebate (.1);

Date	Initials	Hours	Amount	Fee Description
5/10/2012	MOR	3.3	742.50	Receive and review revised Order from E. Guerricabeitia (.2); receive and review revised Order from M. Baldner (.2); incorporate M. Baldner changes (.2); review E. Guerricabeitia changes and discuss with clients (.5); review notes and file (.1); phone call to E. Guerricabeitia (.3); conference call with D. Prehn and D. Bandak to discuss changes to Order (.7); work on revisions to Order (.8); second phone call to E. Guerricabeitia (.4); receive and review e-mail and attachments from M. Hodge relating to employee reductions (.2); exchange e-mails with E. Guerricabeitia regarding comments on order and need to have order filed with court as soon as possible (.2); exchange e-mails with D. Prehn regarding Hodge plans (.2);
5/11/2012	MOR	4.4	990.00	Multiple phone calls with E. Guerricabeitia (.9); negotiate language of proposed Order (.5); multiple revisions to Order (.8); conference call with D. Prehn and D. Bandak (.3); finalize Order and draft letter to Judge Owen (.6); submit proposed Order to court for further consideration (.2); review e-mails from E. Guerricabeitia (.3); receive and review e-mails from D. Prehn and D. Bandak regarding proposed Order (.3); prepare final e-mail and attach final proposed Order to E. Guerricabeitia (.3); prepare short e-mail summary to E. Guerricabeitia regarding status of proposed Order (.2);
5/14/2012	MOR	2.5	562.50	Prepare for conference call (.3); conference call with D. Bandak and D. Prehn to discuss litigation (.4); exchange voicemails with E. Guerricabeitia regarding dissolution matters (.1); receive and analyze e-mails from D. Prehn regarding dissolution (.4); analyze stock sale versus dissolution analysis prepared by D. Prehn (.2); finalize letter regarding preservation of evidence and e-mail to E. Guerricabeitia and M. Baldner (.4); draft letter regarding information request; review D. Prehn comments to draft letter (.2);
5/15/2012	MOR	2.8	630.00	Multiple phone calls to D. Prehn (.9); multiple phone calls to E. Guerricabeitia (.7); work on draft information request letter (.3); review portion of pleadings (.2); review dissolution information (.2); exchange e-mails with E. Guerricabeitia regarding inspection of assets (.3); receive and review e-mail and attached spreadsheet from M. Hodge regarding overhead reduction (.2);

Date	Initials	Hours	Amount	Fee Description
5/16/2012	MOR	3.9	877.50	Multiple phone calls and e-mails to and from D. Prehn regarding auction process (1.0); review portions of Operating Agreement (.3); review portions of draft Order (.2); multiple phone calls to E. Guerricabeitia (.7); prepare for conference call (.2); conference call with D. Prehn and D. Bandak (.5); receive and review e-mail from M. Hodge regarding draft form of bid process (.2); review multiple e-mails and attachments from M. Hodge (.6); follow up with Judge Owen's chambers regarding execution of proposed order (.2);
5/17/2012	MOR	3.5	787.50	Exchange multiple e-mails with client and opposing counsel (.5); multiple phone calls to D. Prehn (.8); multiple phone calls to E. Guerricabeitia (.4); phone call to B. Boyle, counsel for C. Claiborne (.2); continue work on auction issues (.3); receive and review e-mail from E. Guerricabeitia regarding sale of truck (.1); exchange e-mails with E. Guerricabeitia (.2); receive and review e-mail from M. Hodge regarding final big process and instruction (.2); follow up with Judge Owen's chambers regarding signed order and revisions thereto (.1); receive and review multiple e-mails from D. Prehn and D. Bandak regarding analysis of and revisions to final bid process (.5); prepare email/memorandum to E. Guerricabeitia regarding final bid process set for May 18 (.2);
5/18/2012	MOR	0.2	45.00	Exchange e-mails and voicemails with D. Prehn and D. Bandak regarding auction process; monitor e-mails and progress of auction process;
5/19/2012	MOR	0.2	45.00	Receive and review e-mail from D. Prehn regarding intellectual property as it relates to shaker cup molds;
5/20/2012	MOR	0.4	90.00	Receive and review multiple e-mails from D. Prehn regarding auction and intellectual property issues;
5/21/2012	MOR	2.2	495.00	Multiple phone calls to D. Prehn regarding follow up to auction and need for further legal action (1.0); phone call to E. Guerricabeitia regarding auction (.2); receive and review notice of appearance by B. Boyle for C. Claiborne as filed with Fourth District Court (.1); receive and review confidentiality and non-disclosure to competition agreement from D. Prehn related to Technology Plastics (.3); review additional e-mails and attachments from D. Prehn regarding intellectual property (.3); receive and review multiple e-mails from E. Guerricabeitia regarding bid process and final bids (.3);

Date	Initials	Hours	Amount	Fee Description
5/22/2012	MOR	2.3	517.50	Exchange multiple phone calls and multiple e-mails regarding intellectual property/shaker mold issues with clients (.8); phone call to E. Guerricabeitia (.2); exchange e-mails with E. Guerricabeitia regarding nature of lot number 4 intellectual property and lot number 1 shaker cup molds (.4); receive and review letter from E. Guerricabeitia to T. Fernandes at Technology Plastics (.1); receive and review updated financial report from M. Hodge (.2); receive and review e-mail from M. Hodge regarding auction procedures and forfeiture (.1); prepare e-mail to M. Hodge regarding payment of auction amounts and held in trust (.3); meet with D. Prehn to discuss best approach to handling intellectual property/shaker cup mold issue (.2);
5/22/2012	MJM	1.1	170.50	Analyze conduct of the auction and issues related to retaining the auction money in trust until resolution of intellectual property issue;
5/23/2012	MOR	3.7	832.50	Phone call to B. Boyle (.2); multiple phone calls to D. Prehn (.7); receive and review e-mails from client and opposing counsel (.3); lengthy telephone call to D. Prehn regarding strategy (.8); conference with counsel (.2); work on possible motion for injunctive relief (.4); work on second amended complaint (.7); receive and review e-mail from D. Prehn and attached Source balance sheet regarding sale and description of IP (.8); receive and review additional e-mail and attachments from D. Prehn regarding description of auctioned assets (.2);
5/23/2012	MJM	4.7	728.50	Review facts, including e-mails and correspondence, and conference with Mike Roe related to the conduct of the auction (2.0); analyze intellectual property argument proposed by counsel for Hodge related to use of the molds (2.0); analyze potential causes of action related to Hodge's conduct related to the auction (0.7);
5/24/2012	MJM	6.0	930.00	Research additional causes of action related to Hodge's improper actions taken during the auction of Source assets, including a request for declaratory relief, promissory estoppel, equitable estoppel, breach of warranty (2.5); draft, revise, and finalize second amended complaint (3.0); analyze issues related to potential request for injunctive relief related to delivery of shaker cup molds (0.5);

Date	Initials	Hours	Amount	Fee Description
5/24/2012	MOR	2.5	562.50	Phone call to D. Prehn (.2); continue work on draft second motion for injunctive relief (.5); complete second amended complaint (.4); receive and review e-mail from D. Prehn regarding additional comments relating to motion for injunctive relief (.2); work with Judge Owen's chambers to arrange proposed hearing date on second motion for injunctive relief (.2); exchange e-mails with E. Guerricabeitia regarding hearing dates (.2); review issues related to proposed June 4 rule 30(b)(6) depositions of Source 1 and Source 2 (.3); receive and review notice of appearance by C. Crafts on behalf of M. Brown (.1); prepare email/memorandum to D. Bandak and D. Prehn regarding status of work on second amended complaint and second motion for injunctive relief (.2); receive and review e-mail with proposed questions for E. Butkevich (.2);
5/25/2012	MOR	0.6	135.00	Multiple phone calls with D. Prehn regarding witnesses and possible testimony;
5/29/2012	MOR	1.3	292.50	Phone call to D. Prehn (.2); phone call to E. Guerricabeitia regarding injunction and related matters (.2); second phone call to D. Prehn and lengthy discussion of advisability of filing second motion for injunctive relief now or waiting (.5); arrange for release of hearing date currently set for June 19 (.1); receive and review e-mail from E. Guerricabeitia regarding amended complaint and second motion for injunctive relief (.1); receive and review e-mail and attached draft letter to E. Guerricabeitia regarding information request from D. Prehn (.2);
5/30/2012	MOR	1.5	337.50	Complete revisions to and finalize request for information (.3); forward request for information to E. Guerricabeitia and other counsel (.1); phone call to C. Crafts, attorney of record for M. Brown (.2); phone call to J. Geier, attorney of record for Source 1 (.2); exchange e-mails with B. Boyle regarding forbearance on filing of answer until second amended complaint is filed (.2); finalize notices vacating rule 30(b)(6) depositions (.1); exchange e-mails with M. Baldner relating to representation of Source 1 (.1); exchange e-mails with B. Boyle regarding answer to second amended complaint (.1); review draft letter from D. Prehn to R. DeLuca and prepare e-mail response to D. Bandak and D. Prehn (.2);

Date	Initials	Hours	Amount	Fee Description
5/31/2012	MOR	0.3	67.50	Receive and review e-mail and draft letter to BodyBuilding.com; receive and review e-mail from D. Bandak; prepare short e-mail response to D. Prehn regarding draft letter; prepare short e-mail to M. Baldner acknowledging Baldner not representing Source 1;
6/1/2012	MOR	0.4	90.00	Receive and review e-mail from E. Guerricabeitia (.1); receive and review letter from E. Guerricabeitia regarding Hodge response to request for information from The Source (.2); prepare short e-mail to D. Bandak and D. Prehn (.1);
6/4/2012	MOR	1.7	382.50	Prepare for call (.1); lengthy conference call with D. Prehn and D. Bandak regarding strategy (.8); review e-mails from D. Prehn regarding shaker cup design and IP issue strategy in event of additional litigation (.3); prepare short e-mail response to D. Prehn (.1); receive and review notice of appearance of J. Geier on behalf of Source 1 (.1); work on deposition scheduling issues (.3);
6/4/2012	MJM	0.3	46.50	Conference with counsel regarding strategy associated with seeking injunctive relief regarding molds and potential depositions;
6/5/2012	MOR	1.2	270.00	Phone call to D. Prehn regarding trial and injunction strategy (.3); review prior e-mails and attachments from D. Prehn related to IP and shaker cup molds (.2); exchange e-mails with D. Prehn regarding filing of amended complaint (.2); receive and review e-mail from D. Prehn and attached term sheet for bodybuilding.com (.1); review term sheet and suggest revisions to same (.2); receive and review revised term sheet (.1); prepare short e-mail update D. Bandak and D. Prehn (.1);
6/6/2012	MOR	0.9	202.50	Phone call to D. Prehn regarding meetings with bodybuilding.com (.3); review prior e-mails from D. Prehn and D. Bandak (.1); receive and review e-mail from D. Prehn and attached confidentiality and non-disclosure of competition agreement (.3); phone call to D. Prehn regarding non-competition agreement with Technology Plastics (.2);
6/10/2012	MOR	0.7	157.50	Receive and review e-mail from D. Prehn regarding draft term sheet to bodybuilding.com and legal questions (.1); review term sheet and prepare short e-mail to D. Prehn regarding comments to term sheet (.2); receive and review revised term sheet (.1); complete analysis of Plastic Technology non-compete agreement and prepare e-mail/memorandum to D. Prehn regarding results of such analysis (.3);

Date	Initials	Hours	Amount	Fee Description
6/11/2012	MOR	0.1	22.50	Receive and review e-mail from D. Prehn regarding main points of meeting with bodybuilding.com;
6/13/2012	MOR	0.6	135.00	Receive and review e-mails from D. Prehn (.1); receive and review e-mail and attachments from D. Prehn regarding correspondence with bodybuilding.com (.1); exchange e-mails with D. Prehn regarding letter from E. Guerricabeitia at Davison Copple to ASI Computer Systems, Inc. (.1); review letter and prepare e-mail to D. Prehn (.1); receive and review D. Prehn's draft response to ASI Computer Systems (.1); phone call to D. Prehn regarding ASI Computer and related matters (.1);
6/14/2012	MOR	0.5	112.50	Review notes and file (.1); phone call to D. Prehn regarding status of litigation, status of negotiations with bodybuilding.com and possibility of filing or abandoning second motion for injunctive relief (.3); arrange for inquiry as to possible hearing dates in late July and early August for possible second motion for injunctive relief (.1);
6/21/2012	MOR	0.2	45.00	Receive and review e-mail from D. Prehn regarding bodybuilding.com and expected testimony from J. Arp and related issues;
6/22/2012	MOR	0.2	45.00	Exchange short e-mails with D. Prehn regarding holding off on Technology Plastics letter and injunction at this point;
6/27/2012	MOR	0.4	90.00	Phone call to D. Prehn regarding status of case, bodybuilding.com and decision to not seek second injunction (.2); receive and review draft e-mail from D. Prehn to bodybuilding.com; prepare short e-mail to D. Prehn (.2);
6/28/2012	MOR	0.9	202.50	Work on revisions to second amended complaint (.8); complete revisions to second amended complaint and forward to D. Bandak and D. Prehn for review prior to filing (.1);
6/29/2012	MOR	0.3	67.50	Finalize second amended complaint and arrange for filing with district court (.2); prepare e-mail to D. Bandak and D. Prehn regarding status (.1);
7/12/2012	MOR	0.3	67.50	Exchange email with D. Prehn (.2); arrange for redelivery of certified check to client (.1);
7/18/2012	MOR	0.8	180.00	Receive and review answer and affirmative defenses from E. Guerricabeitia on behalf of M. Hodge and Source 2;

Date	Initials	Hours	Amount	Fee Description
7/20/2012	MOR	1.8	405.00	Review portions of Answer (.3); review notes and file (.2); review portions of Second Amended Complaint (.2); prepare for conference call (.1); conference call with D. Prehn and D. Bandak regarding strategy and related matters in state court litigation (.7); receive and review draft letter to bodybuilding.com from D. Prehn (.1); prepare short email to D. Prehn (.1);
7/23/2012	MOR	2.8	630.00	Phone call to D. Prehn regarding litigation strategy (.5); conference with associate counsel regarding affirmative defenses (.4); phone call to B. Boyle, counsel for C. Claiborne, regarding extension of time to answer (.3); receive and review email from D. Prehn regarding suggested discovery questions and avenues of inquiry (.4); review portions of Second Amended Complaint (.4); receive and review The Source Store, LLC's answer to plaintiff's Second Amended Complaint (.5); review affirmative defenses (.3);
7/24/2012	MOR	1.2	270.00	Continue work on discovery requests (1.0); receive and review verification from The Source, LLC (.1); receive and review email from D. Bandak regarding discovery requests (.1);
7/25/2012	MJM	7.3	1,131.50	Draft and revise discovery requests to The Source Store, LLC, The Source, LLC and M. Hodge;
7/26/2012	MJM	4.3	666.50	Revise and finalize discovery requests to The Source Store, LLC, the Source, LLC, and M. Hodge (2.0); draft, revise, and finalize discovery requests to M. Brown and C. Claiborne (2.3);
7/26/2012	MOR	1.6	360.00	Receive and review additional email from D. Prehn to draft interrogatories (.3); review draft discovery requests (.5); conference with co-counsel (.3); review prior email from client (.2); review notes and file and portions of Second Amended Complaint (.3); arrange for serving of discovery requests on defendant parties (.2);
7/27/2012	MOR	0.3	67.50	Review email and comments from D. Prehn regarding draft discovery requests;
7/27/2012	MJM	0.6	93.00	Correspondence with D. Prehn regarding written discovery requests, make modifications, and execute and mail the same;
8/3/2012	MOR	1.2	270.00	Review notes and file (.5); phone call to B. Boyle regarding litigation strategy and extension of time to provide answer (.3); review portions of prior notes and e-mails from client regarding C. Claiborne (.4);

Date	Initials	Hours	Amount	Fee Description
8/6/2012	MOR	0.3	67.50	Follow up and confirm extension deadlines for answers to Second Amended Complaint;
8/7/2012	MOR	0.5	112.50	Receive and review G. Brown's answer to plaintiffs' Second Amended Complaint;
8/14/2012	MOR	0.5	112.50	Receive and review email/memorandum from D. Prehn regarding purchase orders, attorney fee disclosure and related matters (.2); receive and review Notice of Scheduling Conference from district court (.3);
8/15/2012	MOR	2.6	585.00	Review notes and file (.2); review pleadings (.5); prepare for call (.2); conference call with D. Prehn and D. Bandak to discuss status of litigation (.8); follow up phone call to D. Prehn (.2); phone call to B. Boyle regarding answer and counterclaim (.3); receive and review C. Claiborne's Answer and Counterclaim (.4);
8/16/2012	MJM	0.7	108.50	Review and analyze answer and counterclaim filed by defendant C. Claiborne;
8/20/2012	MOR	0.4	90.00	Exchange e-mails with C. Crafts regarding extension of time for discovery responses (.2); receive and review email from D. Prehn with forensic accounting information (.2);
8/21/2012	MOR	0.5	112.50	Conference with paralegal regarding discovery issues (.3); conference with associate attorney regarding discovery (.2);
8/21/2012	MJM	0.5	77.50	Analyze answers filed by defendants, as well as complaint, to determine the strategy for discovery and narrowing issues;
8/22/2012	MJM	-	-	NO CHARGE Draft status update identifying issues to address in the near term to prosecute cause of action against Hodge and the Source Store (2.3);
8/22/2012	MOR	0.8	180.00	Phone call to D. Prehn to discuss forensic accountants and related matters (.5); review e-mails and attachments (.3);
8/23/2012	MOR	1.0	225.00	Receive and review memorandum from associate attorney regarding outstanding issues and litigation strategy (.3); receive and review email and attachments from D. Prehn regarding client's response to C. Claiborne's answer and counterclaim (.3); review notes on April 13, 2012 partner conference call and November 20, 2010 partner conference call (.2); receive and review additional email from D. Prehn regarding discovery material (.2);

Date	Initials	Hours	Amount	Fee Description
8/24/2012	MOR	0.5	112.50	Prepare voicemail to M. Baldner (.1); prepare voicemail to N. Stuart (.1); receive and review preliminary discovery responses from M. Brown from counsel C. Crafts (.3);
8/27/2012	MOR	0.5	112.50	Phone call to M. Baldner regarding anticipated testimony (.3); review notes and file (.2);
8/28/2012	MOR	0.5	112.50	Phone call to N. Stuart regarding anticipated testimony (.3); review notes and file regarding N. Stuart's comments prior to dissolution (.2);
8/28/2012	MJM	0.6	93.00	Analyze counterclaim of C. Claiborne in preparation to draft a reply thereto;
8/29/2012	MJM	0.2	31.00	Analyze comments from D. Prehn related to counterclaim of Claiborne in preparation to draft answer to the same;
8/29/2012	MJM	0.7	108.50	Receive and briefly review discovery responses received from the Source Store, LLC;
8/29/2012	MOR	0.5	112.50	Phone call to E. Guerricabeitia regarding extension of discovery responses (.3); receive and review email from E. Guerricabeitia regarding status of liquidation account (.1); prepare short email to clients regarding E. Guerricabeitia information (.1);
8/30/2012	MOR	1.0	225.00	Receive and review M. Hodge's and The Source, LLC's Answer to Chris Claiborne's Counterclaim, The Source Store, LLC's Answer to Counterclaims against Plaintiffs' and The Source Store, LLC's answers to plaintiffs' first set of interrogatories and requests for production (.5); receive and review lengthy email from D. Prehn regarding contents of counterclaim and response thereto (.3); exchange e-mails with D. Prehn regarding calls to BodyBuilding.com and J. Arp (.2);
8/30/2012	MJM	4.7	728.50	Draft reply to Claiborne's counterclaim based on comments of D. Prehn regarding the same;
8/31/2012	MJM	0.7	108.50	Analyze responses to written discovery submitted by the Source Store, LLC;
8/31/2012	MJM	-	-	NO CHARGE Revise and finalize reply to counterclaim filed by Claiborne (2.3);
8/31/2012	MOR	1.2	270.00	Review and revise Reply memorandum (.7); receive and review additional comment from D. Prehn regarding Claiborne counterclaim (.2); receive and review short email from D. Bandak regarding counterclaim (.1); receive and review The Source Store, LLC's Supplemental Answer to Plaintiffs' First Set of Interrogatories and Requests for Production (.2);

Date	Initials	Hours	Amount	Fee Description
8/31/2012	TMH	0.3	30.00	Research regarding criminal arrests and convictions of defendant M. Hodge, II;
9/4/2012	MOR	0.5	112.50	Complete Reply to Counterclaim and arrange for filing;
9/4/2012	MJM	-	-	Revise and finalize reply to counterclaim of Claiborne;
9/5/2012	MJM	1.7	263.50	Analyze Source 1 discovery responses for deficiencies and issues to address in a letter to counsel (1.2); research law regarding burdens associated with responding to discovery and, in particular, a discovery response stating that Plaintiffs should make an appointment to review hard files and server (0.5);
9/5/2012	MOR	1.4	315.00	Review notes and file (.1); prepare for conference call (.2); conference call with D. Prehn and D. Bandak (.5); review portions of discovery material and issues related to Claiborne counterclaim (.4); confirm filing of reply to counterclaim (.2);
9/5/2012	TMH	1.2	120.00	Research regarding defendant's failure to provide privilege log contemporaneous with document production containing redacted data (.6); research regarding responding party's duty to gather documents responsive to discovery requests and which party is responsible for costs associated with document production (.6);
9/6/2012	TMH	1.2	120.00	Additional research regarding responding party's duty to gather documents responsive to discovery requests and which party is responsible for costs associated with document production (.4); organize records produced by M. Hodge (HODGE1-652) and The Source Store (SOURCE1-1273) for attorney review (.8);
9/6/2012	MJM	1.0	155.00	Draft letter to counsel for Source 1 identifying concerns about production of discovery;
9/6/2012	MOR	2.1	472.50	Prepare for telephonic scheduling conference (.4); review pleadings (.3); review I.R.C.P. 16 (.2); participate in telephonic scheduling conference (.3); follow up on court dates and other matters covered by Judge Owen in the scheduling conference (.3); receive and begin review of defendant M. Hodge's answers and responses to plaintiffs' first set of interrogatories (.5); receive and review email from D. Prehn regarding his review of M. Hodge discovery responses (.1);

Date	Initials	Hours	Amount	Fee Description
9/10/2012	MOR	0.5	112.50	Follow up on discovery responses from B. Boyle on behalf of C. Claiborne (.2); follow up on issue of missing CD (.2); receive and review email from D. Prehn regarding deposition of J. Arp (.1);
9/11/2012	MOR	0.5	112.50	Review notes and file (.1); phone call to D. Prehn to discuss discovery and litigation strategy (.4);
9/12/2012	MOR	0.4	90.00	Exchange voicemails with B. Boyle, attorney for C. Claiborne, regarding response to discovery requests (.2); receive and review email from D. Prehn regarding response to discovery requests (.1); prepare short email to B. Boyle regarding discovery responses (.1);
9/13/2012	MJM	0.9	139.50	Telephone call with J. Geier regarding discovery issues (0.4); analyze options for discovery of electronic documents from Source 1 (0.3); analyze propriety of counsel's position that Source 1 may simply produce the hard drive for copying (0.2);
9/13/2012	TMH	0.8	80.00	Research regarding forensic vendors to image a server and correspond with R. Goldston regarding same;
9/13/2012	MOR	0.5	112.50	Review and revise meet and confer letter and arrange for delivery for counsel for Source 1 (.2); phone call to B. Boyle regarding response to discovery requests (.3);
9/18/2012	MJM	0.3	46.50	Conference with counsel for The Source Store, LLC regarding obtaining information from hard drive and hard copy files and correspond with D. Prehn regarding the same;
9/19/2012	MOR	-	-	NO CHARGE Receive and review emails from D. Prehn regarding computer architecture and discovery matters (.4); review and arrange for sending of meet and confer letter to E. Guerricabeitia (.4);
9/19/2012	MJM	1.0	155.00	Receive and review correspondence from D. Prehn regarding architecture of The Source Store, LLC server (0.2); draft and finalize meet and confer letter to counsel for Hodge regarding deficiencies in Hodge's discovery responses (0.8);
9/20/2012	MOR	1.3	292.50	Prepare for call (.2); phone call to D. Prehn regarding litigation strategy, budget constraints and client's desire to minimize expenditures (.6); conference with paralegal regarding discovery matters (.3); arrange for delivery of deposition notice regarding J. Arp (.2);

Date	Initials	Hours	Amount	Fee Description
9/21/2012	MOR	0.4	90.00	Receive and review email and correspondence from J. Geier, counsel for Source 1 (.2); exchange e-mails with D. Prehn regarding J. Arp's move to North Carolina (.2);
9/24/2012	MOR	0.2	45.00	Conference with paralegal regarding inspection of documents (.2);
9/24/2012	TMH	0.3	30.00	Attention to issues concerning defendants' offer to inspect hard copy files and a computer server in response to discovery requests (.3);
9/25/2012	TMH	0.3	30.00	Telephone conference with J. Geier regarding inspection of hard copy files and The Source Store's server;
9/25/2012	MOR	-	-	NO CHARGE Receive and review The Source Store, LLC's second supplemental answers to plaintiffs' first set of interrogatories and requests for production (.3);
9/26/2012	MOR	2.3	517.50	Review notes and file (.1); prepare for conference call (.3); conference call with D. Prehn and D. Bandak (.9); follow up with paralegal and associate counsel on discovery and scheduling issues (.3); review portions of existing pleadings (.4); receive and review email from D. Prehn regarding additional items to be requested in discovery (.2); receive and review email from D. Prehn regarding J. Arp contact information (.1);
9/26/2012	MJM	1.3	201.50	Prepare for and participate in telephone conference with clients regarding discovery and strategy;
9/27/2012	MOR	0.6	135.00	Review e-mails and attachments (.3); phone call to D. Prehn regarding litigation strategy and discovery matters (.3);
9/28/2012	MOR	1.2	270.00	Review scheduling order (.4); phone call to S. Sevren regarding retention as expert witness (.3); conference with associate attorney and paralegal regarding preparation of appropriate disclosures (.3); exchange e-mails with S. Sevren's office regarding resume and related expert witness disclosure information (.2);
9/28/2012	MJM	0.4	62.00	Review scheduling order and analyze expert curriculum vitae in preparation to prepare expert witness disclosure;
9/28/2012	TMH	0.6	60.00	Review and analyze court's scheduling order (.3); attention to issues concerning plaintiffs' expert witness disclosures (.3);
9/29/2012	MJM	1.0	155.00	Draft and revise expert witness disclosure;

Date	Initials	Hours	Amount	Fee Description
10/1/2012	MOR	0.8	180.00	Review and finalize expert disclosure and forward to defense counsel;
10/1/2012	TMH	0.3	30.00	Review and revise expert witness disclosure;
10/2/2012	TMH	0.8	80.00	Prepare memorandum to Mike Roe and Matt McGee regarding inspection of the documents/server of The Source, LLC (.2); correspond with counsel for Source 1 regarding inspection (.2); prepare motion to disqualify alternate judge without cause and proposed order thereon (.4);
10/2/2012	MOR	1.0	225.00	Review disqualification of district judge issues and prepare disqualification of Judge Kathy Stricklen (.3); conference with paralegal regarding physical inspection of Source 1 discovery material (.2); receive and review correspondence and first set of interrogatories and requests for production of documents from M. Hodge and Source 2 (.2); receive and review lengthy e-mail and attachment from D. Prehn regarding client comments on discovery material (.3);
10/5/2012	MOR	0.4	90.00	Receive and make initial review of defendant's motion for protective order (.2); review e-mail exchange between client and associate attorney regarding motion to compel (.2);
10/7/2012	MJM	0.2	31.00	Correspondence with D. Prehn regarding review of Source 1 records;
10/8/2012	MOR	0.8	180.00	Conference with paralegal regarding discovery (.2); review computer/electronic data issues and direct paralegal to obtain further information (.4); receive and review e-mail from D. Prehn regarding claims and related discovery issues (.2);
10/9/2012	MOR	0.5	112.50	Conference with paralegal regarding document review to be conducted at The Source Store; follow up conversations with associate counsel and paralegal;
10/9/2012	TMH	9.7	970.00	Review complaint, discovery responses, and client communications in preparation for inspection of the Source 1's records (1.2); travel to the Source 2's offices for document inspection (.4); conference with J. Geier and R. Goldston regarding forensic imaging of the Source 1's server (.9); review and mark for copying certain Source 1 records offered for inspection (6.1); return travel (.4); conference with Mike Roe and Matt McGee regarding document review of Source 1's records and imaging of Source 1's server (.7);

Date	Initials	Hours	Amount	Fee Description
10/10/2012	TMH	2.4	240.00	Correspond with J. Geier regarding continued review of Source 1 records and production of same through a third party vendor (.2); conference with R. Goldston regarding data housed on Source 1's server (.5); review privilege log provided by Source 1 (.3); conference with Mike Roe and Matt McGee regarding discovery issues, including document review of Source 1's records and its continued failure to produce records responsive to discovery requests (.8); review notes of prior document review and reconcile with documents requested in discovery requests, for purpose of identifying missing records (.4);
10/10/2012	MOR	0.9	202.50	Receive and review notice of hearing regarding October 6 hearing on Motion for Protective Order (.1); continue to work on discovery and document review (.5); numerous conferences with paralegal regarding same (.3);
10/11/2012	MOR	0.9	202.50	Multiple conferences with paralegal regarding continuing document review (.5); review information regarding Source 1 and Source 2 bank statements and other financial information (.4);
10/11/2012	TMH	7.9	790.00	Prepare outline of requests for production and missing records, in preparation for additional document inspection (.5); travel to the Source 2's offices for document inspection (.4); conference with J. Geier regarding inspection of hard-copy records and forensic imaging of the Source 1's server (.3); review and mark for copying certain Source 1 records offered for inspection (5.9); telephone conferences with J. Geier regarding inspection of hard-copy records (.4); return travel (.4);
10/12/2012	TMH	7.3	730.00	Travel to the Source 2's offices for document inspection (.4); review and mark for copying certain Source 1 records offered for inspection (5.8); telephone conferences with J. Geier regarding inspection of hard-copy records (.3); return travel (.4); upload M. Hodge's PST file and preparation for analysis (.4);
10/12/2012	MOR	0.5	112.50	Conference with paralegal regarding document review (.2); review factual items disclosed thus far in document review, including Cambodian payment and transfer of $186,000 from Source 2's operating line (.3);
10/15/2012	MOR	0.5	112.50	Review notes and file (.1); conference with paralegal regarding document review and discovery issues (.2); phone call to J. Geier, counsel for Source 1, regarding duplication of marked documents and electronic data (.2);

Date	Initials	Hours	Amount	Fee Description
10/15/2012	MJM	0.5	77.50	Analyze issues related to remaining unsupplied financial documents of Source 1;
10/15/2012	TMH	5.3	530.00	Conference with Mike Roe and Matt McGee regarding document inspection and analysis of records (.3); organize notes of document review and photographs of filing cabinets and 77 bankers boxes of documents made available for inspection, in preparation for additional meet and confer to Source 1's counsel regarding missing documentation (.8); review and analyze e-mail files of M. Hodge and reconcile with prior discovery productions and affidavit testimony (2.2); import e-mail files of M. Brown, J. Arp, C. Claiborne, C. Freeman, S. Cook, B. Bews, K. Puett, B. Day and A. Zavala and preparation of same for analysis (.8); series of telephone conferences with R. Goldston regarding e-mail files obtained from Source 1's server (.6); correspond with J. Geier regarding imaging of Source 1's server and proprietary software to access the Profit Maker data (.6);
10/16/2012	MOR	0.2	45.00	Exchange e-mails with J. Geier regarding document review (.2);
10/16/2012	TMH	-	-	NO CHARGE Review and analyze issues concerning defective/inaccessible electronically stored information existing on Source's 1 server and coordinate with forensic computer expert regarding same (2.1);
10/17/2012	MOR	0.3	67.50	Receive and review Defendant M. Hodge's First Set of Interrogatories, Requests for Admission and Requests for Documents to Plaintiffs;
10/18/2012	MOR	0.6	135.00	Receive and review additional e-mails from J. Geier regarding document review and production in response to plaintiff's discovery requests (.2); exchange e-mails with D. Prehn regarding retrieval of electronic data (.2); prepare e-mail to J. Geier regarding proposed "deadlines" to our discovery process (.2);
10/18/2012	TMH	0.3	30.00	Telephone conference with Don Prehn and Tony States regarding Source 1's electronic data;
10/19/2012	MOR	0.6	135.00	Receive and review e-mail from D. Prehn regarding J. Arp; phone call to D. Prehn regarding J. Arp and potential contacts and conversation with J. Arp; receive and review proposed list of questions from D. Prehn;
10/19/2012	TMH	0.5	50.00	Preparation of electronic data for review by clients (.4); correspond with D. Prehn regarding same (.1);

Date	Initials	Hours	Amount	Fee Description
10/22/2012	TMH	0.2	20.00	Prepare memorandum to Mike Roe and Matt McGee regarding evidence to support several causes of action alleged in the complaint;
10/22/2012	MOR	0.3	67.50	Receive and review information regarding evolution of $223,000 order from BodyBuilding.com;
10/24/2012	MOR	0.2	45.00	Receive and review e-mail and attachments from J. Geier regarding discovery responses;
10/26/2012	MOR	0.7	157.50	Receive and begin review of additional discovery responses received from counsel for M. Hodge (.5); conference with paralegal regarding discovery matters (.2);
10/26/2012	TMH	0.9	90.00	Review and analyze The Source LLC's discovery requests to plaintiffs (.6); prepare general objections to discovery requests (.3);
10/29/2012	TMH	4.3	430.00	Prepare answers and responses to The Source LLC's discovery requests to plaintiffs (19 interrogatories and 26 requests for production) (1.8); review civil rules of procedure regarding scope of discovery and experts (.3); review plaintiff's expert witness disclosure (.3); correspond with Don Prehn regarding same (.6); import Source 1 e-mails into electronic searchable database (1.3);
10/29/2012	MOR	0.9	202.50	Conference with paralegal regarding production of discovery responses and related matters (.3); work on discovery (.3); work on disclosure of expert testimony and work file issues (.2); receive and review e-mail and attachments from D. Prehn regarding communications with BodyBuilding.com (.1);
10/29/2012	MJM	0.3	46.50	Analyze issues related to expert disclosure, and responses to discovery related to such disclosure, in light of pending discovery being withheld by The Source, LLC;
10/30/2012	MJM	1.7	263.50	Review draft discovery responses (0.7); draft responses to substantive and factual questions related to specific claims asserted by the Plaintiffs (1.0);

Date	Initials	Hours	Amount	Fee Description
10/30/2012	MOR	1.5	337.50	Review and revise discovery response and production of documents (.5); arrange for delivery of discovery responses to opposing counsel (.1); receive and review correspondence from J. Geier (.1); conference with paralegal regarding discovery (.2); conference with associate attorney regarding response to J. Geier demands (.2); lengthy phone call to D. Prehn regarding litigation strategy (.3); receive and review e-mail/memorandum from D. Prehn regarding claims and issues in ongoing litigation (.1);
10/30/2012	TMH	1.7	170.00	Continue preparation of answers and responses to The Source LLC's discovery requests to plaintiffs (19 interrogatories and 26 requests for production) (.6); conference with Mike Roe and Matt McGee regarding responding to Source 2's discovery requests and Source 1's correspondence regarding its responses to plaintiffs' discovery requests (.3); prepare correspondence to D. Prehn and D. Bandak regarding draft discovery responses (.3); continue importing Source 1 e-mails into electronic searchable database (.5);
10/31/2012	TMH	-	-	NO CHARGE Attention to and analyze issues concerning processing Source 1 PST e-mail files given size and numerous viruses within e-mail accounts (2.3);
10/31/2012	TMH	1.7	170.00	Review and revise correspondence responding to J. Geier's letter concerning Source 1 documents made available for inspection (.3); review client records and e-mails and identify those which are responsive to discovery requests (.8); extended telephone conference with D. Prehn regarding draft responses to Source 2's discovery requests and related discovery issues (0.6);
10/31/2012	MOR	0.3	67.50	Receive and review e-mail from D. Prehn regarding "smoking gun" (.1); receive and review additional e-mails from D. Prehn (.2);
10/31/2012	MJM	1.8	279.00	Finalize draft discovery responses (0.7); conference call with D. Prehn (0.3); analyze letter from J. Geier related to discovery and respond to the same (0.8);
11/1/2012	MJM	0.4	62.00	Review final production, and review, revise and finalize discovery responses to serve on the Source, LLC;

Date	Initials	Hours	Amount	Fee Description
11/1/2012	TMH	4.2	420.00	Correspond with D. Prehn regarding discovery responses and documents responsive to Source 2's discovery requests (.9); review and analyze correspondence from J. Geier regarding Source 1 documents made available for inspection (.2); compile, review and analyze, source code, and prepare client records for production to opposing counsel (1.9); revise and finalize discovery responses (1.2);
11/1/2012	MOR	0.8	180.00	Receive and review letter from J. Geier regarding outstanding discovery matters and copying of flagged documents (.1); review outgoing discovery information (.6); receive and review second email from J. Geier (.1);
11/2/2012	TMH	1.6	160.00	Correspond with Judge Owen's clerk regarding ruling on motion to compel (.1); prepare answers, responses, and objections to M. Hodge's discovery requests (14 interrogatories, 13 requests for admissions, and 7 requests for production) (1.5);
11/6/2012	TMH	-	-	NO CHARGE Attention to and analyze issues concerning processing problematic Source 1 PST e-mail files (2.3);
11/8/2012	TMH	0.3	30.00	Correspond with D. Prehn regarding discovery requests propounded by M. Hodge;
11/12/2012	MJM	0.5	77.50	Review D. Prehn's answers to discovery requests from Hodge in preparation to respond;
11/12/2012	MJM	0.8	124.00	Review Source 1's production of discovery, draft correspondence to J. Geier regarding bank account statements, and correspondence with D. Prehn regarding the same;
11/12/2012	TMH	1.6	160.00	Review documents produced by Source 1 (Bates nos. Source I 1-1680) and identify missing categories of documents responsive to discovery requests (.7); strategy conference with Mike Roe and Matt McGee in light of impending pre-trial and discovery deadlines (.5); correspond with D. Prehn regarding discovery issues and pre-trial deadlines (.3); correspond with Judge Owen's clerk regarding plaintiffs' motion to compel responses by Source 2 (.1);
11/12/2012	MOR	1.6	360.00	Conference with paralegal and associate counsel regarding litigation and discovery strategy (.5); review portions produced discovery, both incoming and outgoing, to formulate strategy and arrange for implementation (.5); follow up on issue of Source 1 final accounting (.4); receive and review email from D. Prehn regarding Profit Maker and other discovery issues (.2);

Date	Initials	Hours	Amount	Fee Description
11/13/2012	MOR	1.4	315.00	Continue work on Prehn discovery matters (.8); receive and review email and attachment from D. Prehn regarding partnership call and related matters (.3); receive and review follow up emails from D. Prehn (.3);
11/13/2012	MJM	0.7	108.50	Review draft responses to discovery requests from Hodge;
11/14/2012	MJM	1.8	279.00	Draft and revise answers to discovery requests to Plaintiffs from Hodge;
11/14/2012	TMH	1.3	130.00	Review and revise responses to Hodge's discovery requests (1.1); prepare correspondence to clients regarding draft discovery responses (.2);
11/15/2012	TMH	0.5	50.00	Telephone conference with D. Prehn and Matt McGee regarding draft responses to Hodge's discovery requests (.3); correspond with D. Prehn regarding revised discovery responses (.2);
11/15/2012	MJM	0.9	139.50	Revise discovery responses in light of comments from counsel and finalize and produce the same;
11/15/2012	MOR	1.8	405.00	Conference with paralegal regarding revisions to requests for admissions (.2); review and revise responses to Request for Admissions (.8); exchange emails with D. Prehn regarding J. Arp and related discovery matters (.3); phone call to D. Prehn (.5);
11/16/2012	TMH	1.4	140.00	Review D. Prehn's notes of partner conference calls and analyze issues concerning protected information contained therein (1.1); revise and finalize responses to Hodge's discovery requests (.3);
11/19/2012	MOR	1.7	382.50	Review notes and file (.1); prepare for call (.2); lengthy phone call with D. Prehn to discuss litigation strategy (.6); conference with paralegal regarding incoming and outgoing discovery (.2); conference with associate counsel regarding possible motions for summary judgment and other pre-trial motions (.2); receive and review additional emails from D. Prehn regarding discovery matters (.3); review scheduling orders and reconcile deposition and written discovery deadlines (.1);

Date	Initials	Hours	Amount	Fee Description
11/20/2012	MOR	1.5	337.50	Phone call to D. Prehn regarding J. Arp and litigation strategy (.7); conference with paralegal regarding follow up to deposition notices (.2); conference with associate attorney regarding deposition schedule (.2); review D. Prehn emails regarding background and $50,000 transfer for liquidation account (.2); receive and review email from J. Geier (.1); arrange for execution of protective non-disclosure agreement and motion for costs and fees (.1);
11/20/2012	TMH	3.2	320.00	Review and respond to correspondence from D. Prehn regarding recent $50,000 transfer of funds to M. Hodge (.3); research regarding conducting depositions in North Carolina under a subpoena (.7); correspond with Durham County Superior Court Clerk regarding same (.2); prepare notice of depositions duces tecum and subpoenas to Syringa Bank, C. Halsted, and M. Balder (.8); correspond with court reporter regarding deposition in North Carolina (.3); review and analyze Idaho Rules of Civil Procedure concerning trial preservation depositions (.2); prepare notice of deposition and subpoena duces tecum to J. Arp (Idaho and North Carolina forms) (.5); review and analyze Idaho Rules of Civil Procedure regarding award of attorneys fees and costs for successful motion to compel (.2);
11/20/2012	MJM	0.5	77.50	Review and finalize notices of deposition of all non-party depositions;
11/20/2012	MJM	0.8	124.00	Analyze North Carolina rules for issuing subpoena for appearance for deposition;
11/21/2012	MJM	0.3	46.50	Correspondence to counsel for Source 1 and receive and review document production of Source 1;
11/21/2012	MJM	0.8	124.00	Draft non-disclosure agreement and provide the same to counsel for Source 2;
11/21/2012	TMH	0.7	70.00	Correspond with court reporters regarding deposition in North Carolina, including conducting the deposition via video conferencing (.3); correspond with D. Prehn regarding locating J. Arp (.2); review and analyze issues concerning Source 1's continued failure to produce bank statements and final accounting (.2);
11/21/2012	MOR	1.1	247.50	Review and revise Non-Disclosure Agreement and arrange for delivery to E. Guerricabeitia (.4); continue work on scheduling of depositions and completion of written discovery (.4); conference with paralegal (.2); conference with associate counsel (.1);

Date	Initials	Hours	Amount	Fee Description
11/26/2012	MJM	2.8	434.00	Review production of discovery documents by Source 1 (1.2); correspondence with J. Geier regarding information still missing from production and outstanding final accounting (0.6); research law regarding obligation to obtain information available to a person, even if not in possession (1.0);
11/26/2012	TMH	2.6	260.00	Correspond with Tri-County Process Service regarding service of subpoena on J. Arp in North Carolina (.1); prepare instructions for issuance of North Carolina subpoena and service of Idaho and North Carolina documents upon J. Arp (.3); review April through October 2012 bank statements provided by Source 1 (SOURCE I 1954-1987) and General Ledger Report (1.1); correspond with D. Prehn regarding same (.1); research regarding Source 1's responsibility to produce requested information and documents within its possession, custody and control (.3); conference with D. Prehn regarding discovery issues (.3); prepare notice of deposition duces tecum to N. Stuart (.4);
11/26/2012	MOR	1.5	337.50	Conference with paralegal (.2); review notes and file (.2); conference with associate attorney regarding exerting maximum pressure on opposing parties to comply with outstanding discovery requests and court orders (.3); review information regarding bank statements; receive and review email from D. Prehn regarding service on J. Arp (.1); receive and review email exchanges between associate attorney and J. Geier regarding outstanding discovery (.3); conference with associate attorney regarding legal position on J. Geier's refusal to provide compliant responses (.2);
11/27/2012	MOR	1.1	247.50	Exchange voicemails with J. Geier (.2); prepare for call (.2); phone call to J. Geier regarding responses to outstanding discovery requests (.4); upon J. Geier's refusal to provide adequate responses, begin process of drafting and filing second motion to compel (.3);

Date	Initials	Hours	Amount	Fee Description
11/27/2012	TMH	6.5	650.00	Prepare motion to compel Source 1 to respond to discovery requests (.3); prepare memorandum in support of motion to compel (1.2); research, review and analyze Idaho Rules of Civil Procedure and related case authorities regarding motions to compel (1.0); review and analyze discovery requests to Source 1 and its responses thereto, including document productions (1.4); review and analyze correspondence between Source 1's counsel and this office and identifying pertinent correspondence to use as exhibits in support of motion to compel (.9); prepare exhibits to affidavits in support of motion to compel (.4); correspond with Judge Owen's clerk regarding motion to compel (.2); conference with Mike Roe regarding Source 1's continued failure to produce the bank account records and accounting (.3); telephone conference with D. Bandak regarding non-disclosure agreement and discovery issues (.4); prepare affidavit of Mike Roe in support of motion to compel (.4);
11/27/2012	MJM	2.0	310.00	Review produced documents to confirm gap in Bates ranges (0.2); correspondence with counsel for Source 1 regarding the same, as well as non-responsiveness related to credit card statements and banking information (0.2); revise draft of motion to compel production of final accounting and banking documents by Source 1 (1.6);
11/28/2012	MJM	1.0	155.00	Revise, finalize and file motion to compel, memorandum in support and supporting affidavits;
11/28/2012	TMH	2.7	270.00	Prepare affidavit of Matt McGee and affidavit of Tiffiny Hudak in support of motion to compel (1.6); review and analyze issues concerning counsel for Source 1's claims that bank statement were produced/offered for inspection (.4); prepare notice of hearing (.2); revise and finalize motion to compel and supporting pleadings, together with exhibits (.5);
11/28/2012	MOR	0.9	202.50	Assist in completion of second motion to compel and arrange for filing of motion (.4); receive and review email and attachment from J. Geier regarding outstanding discovery (.2); conference with paralegal regarding bank statements (.1); receive and review multiple emails from D. Prehn regarding accounting and financial information (.2);

Date	Initials	Hours	Amount	Fee Description
11/29/2012	MOR	0.7	157.50	Continue work on discovery matters (.5); review detailed G.O. report from client (.2);
11/29/2012	TMH	3.2	320.00	Prepare subpoena duces tecum to custodian of records for BodyBuilding.com (.3); review and analyze financials produced by Source 1 and D. Prehn's notes regarding the cumulative general ledger report (1.7); review and respond to correspondence from D. Prehn regarding same (.5); prepare correspondence to Judy Geier regarding verification of Source 1's discovery responses (.1); strategy conference with Mike Roe and Matt McGee (.3); telephone conference with D. Prehn regarding Source 1 financials (.3);
11/29/2012	MJM	0.4	62.00	Receive correspondence from counsel for Source 2 regarding delayed responses to discovery and respond to the same;
11/30/2012	MJM	0.2	31.00	Coordinate with L. Paul at Bodybuilding.com regarding subpoena of C. Halsted;
11/30/2012	TMH	2.5	250.00	Conference with Matt McGee regarding communication from BodyBuilding.com's legal department regarding deposition subpoena duces tecum to C. Halsted (.2); revise subpoena duces tecum to BodyBuilding.com (.1); prepare additional subpoena to C. Halsted, as an employee of BodyBuilding.com (.1); correspond with process server regarding service on J. Arp (.3); preparation of subpoenas for service on BodyBuilding.com (.1); review and analyze Source 1 and Source 1 bank statements and canceled checks received from Syringa Bank under subpoena (.9); prepare correspondence to D. Prehn and D. Bandak regarding same (.1); review and analyze Source 1's amended fifth supplemental production and documents produced therewith (SOURCE I 1988-2098) (.7);
11/30/2012	MOR	0.2	45.00	Receive and review information from paralegal regarding service of J. Arp;
12/2/2012	TMH	2.1	210.00	Prepare memorandum of fees and costs and affidavit of Mike Roe in support thereof concerning motion to compel against Source 2 (1.1); review time entries between September 1 and November 20 and identify entries concerning motion to compel against Source 2, for purposes of calculating proposed fee award (1.0);
12/3/2012	TMH	0.3	30.00	Prepare spreadsheet of time entries relating to motion to compel against Source 2;
12/3/2012	MOR	0.3	67.50	Follow up an confirm service of J. Arp;

Date	Initials	Hours	Amount	Fee Description
12/4/2012	MOR	0.6	135.00	Conference with paralegal regarding scheduling of depositions (.3); receive and review summary of complaint items/supporting evidence from D. Prehn (.3);
12/4/2012	TMH	2.3	230.00	Revise and finalize memorandum of fees and costs and affidavit of Mike Roe in support thereof (.2); prepare notice of deposition to M. Hodge, M. Brown, C. Claiborne, B. Bews, J. Welch, and S. Cook (.9); prepare notice of 30(b)(6) deposition of The Source Store, LLC, including a list of topics required under the Idaho Rules of Civil Procedure (.4); prepare correspondence to J. Geier regarding documents to be copied from Source 1 records made available for inspection (.8);
12/5/2012	TMH	0.9	90.00	Review correspondence from D. Prehn regarding additional discovery to conduct (.3); telephone conference with D. Prehn regarding discovery and litigation matters (.6);
12/5/2012	MOR	0.2	45.00	Receive and review email from D. Prehn regarding debt payoff schedule authored by M. Hodge;
12/6/2012	TMH	0.6	60.00	Prepare notice of 30(b)(6) deposition to Source 2 (.4); revise and finalize deposition notices to Source 1 and Source 2 (.2);
12/6/2012	MJM	0.2	31.00	Review and execute Rule 30(b)(6) deposition notices to Source 1 and Source 2;
12/7/2012	MJM	0.4	62.00	Correspondence to counsel for Source 2 regarding outstanding discovery (0.1); correspondence to counsel for Source 1 regarding status of final accounting (0.1); receive correspondence from counsel for Source 2 attaching certain responsive documents (0.1); correspondence with all counsel regarding deposition scheduling issues (0.1);
12/7/2012	TMH	-	-	NO CHARGE Research regarding the Court's removal of Michael Hodge as a defendant in the litigation (.5); correspond with Judge's clerk to resolve issue (.3);
12/7/2012	MOR	0.2	45.00	Conference with paralegal regarding M. Hodge and incomplete ROA;

Date	Initials	Hours	Amount	Fee Description
12/10/2012	MOR	2.6	585.00	Conference with paralegal (.2); conference with associate counsel (.2); review notes and file (.2); prepare for conference call (.4); conference call with opposing counsel in order reset certain depositions and related matters (.4); review selected discovery documents (.5); receive and review email from E. Guerricabeitia (.2); receive and review email from B. Boyle regarding conference call (.1); receive and review email from J. Geier regarding deposition schedule (.1); receive and review The Source, LLC's first supplemental answers and responses to plaintiffs' first set of discovery (.3);
12/10/2012	TMH	0.6	60.00	Identify remaining documents to procure from Source 1, in light of recent production of bank statements for January through April 2012 (.3); review and analyze issues concerning deposition scheduling, given the parties agreement to extend deposition cutoff (.3);
12/10/2012	MJM	1.9	294.50	Correspondence with all counsel regarding proposed teleconference to discuss depositions (0.2); analyze strategy to extend discovery and depositions (0.5); review documents provided by Source 2 and identify primary deficiencies in preparation for telephone call (0.5); participate in teleconference regarding deposition scheduling and extension of deposition deadline, as well as status of final accounting (0.4); draft e-mail to all counsel reflecting decisions made during telephone conference (0.3);
12/11/2012	MJM	0.7	108.50	Coordinate rescheduling of depositions with all counsel (0.3); receive and briefly review opposition to motion to compel filed by Source 1 (0.4);
12/11/2012	TMH	1.1	110.00	Review Source 1's opposition to motion to compel, memorandum in support, and affidavits of M. Hodge, M. Brown, and J. Geier, together with voluminous exhibits thereto (.8); prepare memorandum to Mike Roe and Matt McGee regarding allegations concerning document review (.3);
12/11/2012	MOR	0.7	157.50	Receive and review additional discovery responses from opposing parties (.5); receive and review email from E. Guerricabeitia regarding M. Hodge availability for depositions (.2);

Date	Initials	Hours	Amount	Fee Description
12/12/2012	MOR	1.5	337.50	Phone call to D. Prehn regarding discovery (.2); second lengthy phone call to D. Prehn regarding cost of litigation and advisability of narrowing issues and/or otherwise reducing legal costs in light of potential settlement or judgment amount (.9); receive and review email from E. Guerricabeitia regarding scheduling of depositions (.1); work on reply to J. Geier's opposition to motion to compel (.4);
12/12/2012	TMH	2.4	240.00	Additional review and analysis of financial records produced by Source 1 in light of allegations contained in Source 1's opposition to motion to compel (.5); conference with Matt McGee regarding same (.2); review and revise correspondence to Judy Geier regarding discovery matters (.3); review and analyze Source 2 financials (Source 2 29-278) (1.3); review and analyze motion to quash subpoena filed by M. Balder, together with supporting pleadings (.3);
12/12/2012	TMH	-	-	NO CHARGE Research regarding Source 2's social media juxtaposed with Source 1 and Source 2 financials, to identify any inconsistencies therein (1.2); correspond with D. Prehn regarding same (.2);
12/12/2012	MJM	1.5	232.50	Receive and review motion to quash subpoena from Baldner's office regarding scheduled deposition and privilege issues (0.4); draft follow-up meet and confer letter to counsel for Source 1 regarding missing register of actions (1.1);
12/13/2012	MJM	6.0	930.00	Draft reply in support of motion to compel (5.3); numerous emails with all counsel regarding deposition of Arp and necessity of 3 separate depositions for Hodge (0.7);
12/13/2012	TMH	1.1	110.00	Telephone call to J. Arp regarding deposition (.1); review and analyze issues concerning the North Carolina subpoena served on J. Arp, in light of inquiry by Source 1's counsel regarding exhibit to subpoena (.3); series of conferences with Matt McGee concerning disingenuous allegations by Source 1 in its opposition (.3); review and revise reply in support of motion to compel (.4);

Date	Initials	Hours	Amount	Fee Description
12/13/2012	MOR	1.7	382.50	Prepare for call (.2); lengthy phone call to D. Prehn regarding litigation strategy, discovery matters, and costs of litigation and possible need to narrow issues in litigation (.9); receive and review email from E. Guerricabeitia regarding deposition scheduling (.1); follow up with paralegal regarding service on J. Arp (.2); receive and review email from J. Geier regarding M. Hodge depositions (.1); receive and review email and attached spreadsheet from D. Prehn (.2);
12/14/2012	MOR	0.7	157.50	Work on issues related to reply in support of motion to compel (.5); review reply in support of motion to compel and arrange for filing (.2);
12/14/2012	TMH	0.3	30.00	Correspond with Judge Owen's clerk regarding hearing on motion to compel against Source 1 (.1); conference with Mike Roe and Matt McGee regarding upcoming depositions (.2);
12/14/2012	MJM	1.8	279.00	Revise, finalize and file reply in support of motion to compel;
12/17/2012	MJM	0.6	93.00	Receive e-mail from counsel for Source 1 regarding offer to put off hearing in exchange for provided register and assurance that Source 1 will deliver final accounting by December 21 and analyze issues related thereto (0.3); correspondence with general counsel at Bodybuilding.com regarding deposition of C. Halstead (0.3);
12/17/2012	TMH	2.4	240.00	Correspond with Boise and North Carolina court reporters regarding upcoming depositions (.3); prepare amended subpoenas to C. Halstead and custodian of records at BodyBuliding.com (.5); correspond with Durham County Superior Court in North Carolina regarding subpoena for deposition of J. Arp (.2); prepare deposition subpoena duces tecum to J. Arp (Idaho and North Carolina) and amended notice of deposition (.4); prepare amended notice of deposition to C. Halstead and J. Welch (.2); prepare deposition subpoena to J. Welch (.2); correspond with Tri County Process Serving regarding service of subpoenas in Idaho and North Carolina (.6);
12/17/2012	MOR	0.2	45.00	Conference with associate counsel regarding discovery matters and latest communication from J. Geier (.1); conference with paralegal regarding video-taped trial preservation deposition of J. Arp (.1);

Date	Initials	Hours	Amount	Fee Description
12/18/2012	MOR	2.4	540.00	Conference with associate attorney regarding final preparation for hearing on motion to compel (.3); phone call to D. Prehn (.3); conference call with D. Prehn and D. Bandak regarding trial strategy and need to economize (1.5); receive and review email from D. Prehn and summary of complaint losses spreadsheet and dissolution payment to partners spreadsheet (.3);
12/18/2012	TMH	0.3	30.00	Telephone conference with process server regarding subpoenas to C. Halstead (Idaho) and J. Arp (North Carolina);
12/18/2012	MJM	3.4	527.00	Prepare for and participate in hearing on motion to compel production by Source 1;
12/19/2012	MJM	0.6	93.00	Review deposition notices and analyze the necessity of adding a request to produce a person to speak to the issue of who certain unidentified bank accounts reflected in Source 1 account information belong to, and what certain credits and debits are for (0.3); draft e-mail to counsel for Source 1 confirming her agreement to look for wire and electronic transfer information and to deliver the final accounting by December 27, 2012 (0.3);
12/19/2012	TMH	1.2	120.00	Strategy conference with Mike Roe and Matt McGee;
12/19/2012	MOR	0.3	67.50	Receive and review email from D. Prehn regarding estimates for costs of depositions (.2); work on preparation of estimates (.1);
12/20/2012	MOR	0.5	112.50	Conference with paralegal (.1); conference with associate attorney (.1); phone call to D. Prehn regarding discovery and related matters (.3);
12/20/2012	MJM	0.5	77.50	Correspondence with counsel regarding bank information she indicated she was going to obtain and the process to obtain documents marked for copying (0.2); analyze claims in complaint to determine potentially weak claims (0.3);
12/20/2012	TMH	0.7	70.00	Correspond with process server regarding service of subpoenas upon J. Welch and J. Arp (.4); correspond with J. Geier regarding Source 1 documents made available for inspection and marked for copying (.3);
12/21/2012	MJM	2.5	387.50	Prepare memorandum addressing potential issues related to damages associated with auction claims and intellectual property claims (1.5); participate in telephone conference with clients (1.0);

Date	Initials	Hours	Amount	Fee Description
12/21/2012	TMH	4.1	410.00	Correspond with J. Geier regarding identification of previously inspected records for production by Source 1 (.4); identify and select Source 1 records at the offices of Source 1 (1.8); correspond with vendor regarding same (.4); review Source 1 and Source 2 banking records and prepare amended 30(b)(6) notices of deposition to Source 1 and Source 2, identifying particular account numbers for banking wire transfers (1.5);
12/21/2012	MOR	1.5	337.50	Conference with paralegal (.1); conference with associate counsel (.1); prepare for conference call (.2); conference call with D. Bandak and D. Prehn regarding depositions and strategy in terms of limiting claims and/or defendants (.5); receive and review additional documents from Source 1 as transmitted by J. Geier (.2); receive and review analysis of lost profit damage claim (.2); receive and review spreadsheet and related documents from D. Prehn (.2);
12/24/2012	MOR	0.2	45.00	Receive and review email communications between J. Geier and Tiffiny Hudak;
12/27/2012	MOR	0.6	135.00	Phone call to J. Arp regarding deposition and possible reset of deposition (.2); receive and review seventh supplemental discovery submission from J. Geier (.3); conference with associate counsel regarding damage model (.1);
12/27/2012	TMH	2.8	280.00	Correspond with process server regarding service of subpoena on J. Arp and his continued attempts to avoid service (North Carolina) (.2); correspond with court reporter regarding accommodations to North Carolina deponent (.2); review and analyze additional production of documents from Source 1 (SOURCE 1 2099-5171) (2.1); preparation of records for review by client (.3);
12/28/2012	TMH	2.9	290.00	Correspond with legal department at BodyBuilding.com regarding documents responsive to subpoena (.3); analyze issues concerning impacts of delaying depositions on litigation through trial in light of Source 1's failure to provide final accounting (.3); review and analyze records produced by BodyBuilding.com (emails and purchase orders) (2.0); preparation of electronic BodyBuilding.com records (e-mails) for review by clients and prepare correspondence to D. Prehn and D. Bandak regarding same (.3);

Date	Initials	Hours	Amount	Fee Description
12/28/2012	MOR	0.7	157.50	Phone call to D. Prehn regarding ongoing litigation (.3); receive and review voicemail from BodyBuilding.com regarding proposed deposition dates (.2); receive and review email from opposing counsel regarding deposition schedule (.1); exchange emails with D. Prehn regarding J. Arp (.2);
12/28/2012	MJM	1.7	263.50	Review materials copied from site visit and additional supplementation from Source 1 (0.9); correspondence with all counsel regarding status of final accounting, and moving depositions in light of the fact the final accounting has not yet been delivered (0.8);
12/31/2012	TMH	0.8	80.00	Continue to review and analyze records produced by BodyBuilding.com (emails and purchase orders) (.6); preparation of hard-copy records for review by clients and prepare correspondence to D. Prehn and D. Bandak regarding same (.2);
1/2/2013	MOR	0.3	67.50	Review notes and file (.2); voicemail to J. Arp regarding new deposition date (.1);
1/2/2013	MJM	0.2	31.00	Correspondence with all counsel regarding reset depositions;
1/2/2013	TMH	1.0	100.00	Prepare for and conduct telephone conference with J. Welch, former bookkeeper for Source 2 (.5); prepare proposed deposition schedule in light of Source 1's failure to provide final accounting (.3); correspond with BodyBuilding.com legal department regarding deposition of C. Halstead (.2);
1/3/2013	TMH	2.0	200.00	Telephone conference with BodyBuilding.com's legal department regarding deposition of C. Halstead (.1); correspond with court reporter regarding deposition of J. Arp (.1); review correspondence from E. Guerricabeitia regarding deposition of M. Hodge and the Source entities (.1); prepare amended notices of deposition for M. Hodge, Source 1, Source 2, M. Brown, C. Halstead, C. Claiborne, S. Cook, B. Bews, and N. Stuart (.9); correspond with court reporter regarding rescheduled depositions (.1); telephone conference with J. Welch (.2); review correspondence from process server regarding service of subpoena upon J. Arp (.2); review amended subpoena issued by the North Carolina court and prepare notice of service of same on opposing counsel (.3);
1/3/2013	MOR	0.5	112.50	Receive and review email from D. Prehn regarding deposition scheduled and J. Welch information (.2); conference with paralegal regarding depositions (.3);

Date	Initials	Hours	Amount	Fee Description
1/4/2013	MOR	0.4	90.00	Receive and review draft correspondence to E. Guerricabeitia regarding outstanding discovery (.2); conference with counsel regarding outstanding discovery (.2);
1/4/2013	MJM	0.3	46.50	Execute amended notice of deposition and follow up with counsel for Source 2 regarding outstanding order reports;
1/8/2013	TMH	0.9	90.00	Prepare correspondence to legal department at BodyBuilding.com regarding subpoena to C. Halstead (.2); correspond with Court Reporter regarding February depositions (.2); conference with Mike Roe and Matt McGee regarding upcoming depositions, experts, damages, and pre-trial issues (.5);
1/8/2013	MOR	0.9	202.50	Strategy conference with associate counsel and paralegal regarding litigation strategy and discovery matters (.5); receive and review email correspondence regarding deposition schedule (.1); receive and review short email from E. Guerricabeitia regarding J. Arp deposition (.1); receive and review communication regarding financial statements from E. Guerricabeitia (.2);
1/9/2013	MOR	0.3	67.50	Receive and review voicemail from J. Arp regarding rescheduling of deposition (.2); receive and review multiple correspondence from J. Geier regarding final accounting (.1);
1/9/2013	MJM	0.3	46.50	Review and analyze telephone call from J. Arp regarding resetting telephonic deposition (0.2); correspondence to all counsel regarding whether J. Arp and J. Welch depositions are going forward as scheduled (.1);
1/10/2013	MOR	0.5	112.50	Voice message to J. Arp (.1); continue work on deposition schedules (.2); conference with paralegal (.1); receive and review email from E. Guerricabeitia regarding J. Arp deposition (.1);
1/11/2013	MOR	0.3	67.50	Conference with paralegal regarding J. Welch interview and possible deposition (.2); receive and review email from D. Prehn regarding J. Arp and dissolution account (.1);
1/11/2013	TMH	0.3	30.00	Telephone conference with J. Welch regarding employment with Source 2 and related issues (.2); review and respond to correspondence from D. Prehn regarding upcoming depositions (.1);

Date	Initials	Hours	Amount	Fee Description
1/14/2013	TMH	0.7	70.00	Review and respond to correspondence from D. Prehn regarding BodyBuilding.com purchase orders (.3); telephone conference with North Carolina court reporter regarding deposition of J. Arp (.2); prepare notice vacating deposition of J. Welch (.2);
1/14/2013	MJM	5.0	775.00	Draft response to Source 2's motion and objection to costs and attorney fees;
1/14/2013	MOR	0.9	202.50	Review notes and file (.1); phone call to J. Arp (.2); conference with paralegal regarding logistics of J. Arp deposition (.3); exchange emails with D. Prehn regarding J. Arp (.2); receive and review email and attachment from D. Prehn regarding Source 2 orders report (.1);
1/15/2013	MOR	0.7	157.50	Phone call to D. Prehn (.4); phone call to J. Arp (.3);
1/15/2013	MJM	0.8	124.00	Draft affidavit in support of response in opposition to objection to fees (0.5); finalize and file response in opposition to objection to fees (0.3);
1/16/2013	TMH	0.2	20.00	Review and respond to correspondence from legal department at BodyBuilding.com regarding deposition of C. Halstead;
1/17/2013	TMH	0.8	80.00	Prepare for and attend witness interview of J. Welch with Matt McGee;
1/17/2013	MJM	1.7	263.50	Receive and review final accounting and supporting affidavits (0.6); interview J. Welch (1.1);
1/17/2013	MOR	0.8	180.00	Conference with paralegal and associate attorney regarding interview of J. Welch (.2); exchange emails with D. Prehn regarding J. Arp deposition (.1); receive and review final accounting Affidavit of J. Young and Affidavit of M. Hodge (.2); receive and review Source 1's eighth supplemental answers to plaintiff's first set of interrogatories and related documentation (.3);
1/18/2013	MOR	0.2	45.00	Receive and review summary of J. Welch interview (.1); receive Notice of Source 2's reply to plaintiff's opposition motion and objection to disallow costs and fees (.1);
1/18/2013	TMH	0.2	20.00	Review Source 2's reply in support of motion in opposition to plaintiffs memorandum of fees and costs (regarding motion to compel);
1/18/2013	MJM	0.2	31.00	Receive and review reply in support of objection to motion to fix costs;

Date	Initials	Hours	Amount	Fee Description
1/21/2013	MJM	0.1	15.50	Review deposition dates and draft e-mail to D. Prehn regarding availability to go over his findings;
1/21/2013	MJM	0.2	31.00	Analyze issues related to final accounting and deposition approaches with Mike Roe;
1/21/2013	MOR	0.5	112.50	Review notes and file (.2); prepare for call (.1); voicemail to J. Arp (.1); review portion of discovery information (.1);
1/22/2013	MOR	0.7	157.50	Conference with counsel and paralegal regarding hearing on Source 2's Motion and Objection to Disallow Plaintiffs' Attorneys Fees and Costs (.2); work on rescheduling J. Arp deposition (.3); receive and review emails from D. Prehn regarding open issues and meeting (.2);
1/22/2013	MJM	1.4	217.00	Prepare for, attend and participate in hearing regarding motion for fees and costs related to motion to compel;
1/22/2013	TMH	0.6	60.00	Correspond with legal team at BodyBuilding.com regarding deposition of C. Halstead (.2); prepare amended deposition notice and subpoena to C. Halstead (Bodybuilding.com) in light of deponent's unavailability on February 15th (.3); correspond with court reporter regarding same (.1);
1/23/2013	MOR	0.2	45.00	Receive and review email from D. Prehn regarding related business issues;
1/25/2013	MOR	1.0	225.00	Review notes (.3); lengthy phone call to D. Prehn regarding ongoing litigation and related business issues (.7);
1/28/2013	MOR	1.9	427.50	Review notes and file (.1); conference with paralegal (.5); conference with associate attorney (.8); prepare for conference call with D. Prehn and D. Bandak (.5);
1/28/2013	MJM	1.5	232.50	Prepare for and participate in meeting with D. Prehn regarding pursuing claims and analysis of financials;
1/29/2013	MJM	0.2	31.00	Receive e-mail from counsel for Hodge regarding mediation and draft e-mail to all counsel regarding mediation;
1/29/2013	MOR	0.6	135.00	Phone call to E. Guerricabeitia regarding mediation (.3); exchange emails with E. Guerricabeitia regarding scheduling mediation (.2); prepare email to J. Huegli regarding potential mediation (.1);

Date	Initials	Hours	Amount	Fee Description
1/30/2013	MOR	0.7	157.50	Exchange emails with opposing counsel regarding scheduling of mediation (.2); conference with paralegal and associate attorney regarding need for mediation statement and supporting evidence (.3); exchange emails with E. Guerricabeitia regarding substitute of J. Magel for J. Huegli as mediator (.2);
2/1/2013	TMH	0.2	20.00	Telephone conference with Matt McGee and D. Prehn regarding preparation for mediation and associated pre-mediation statement;
2/1/2013	MOR	0.3	67.50	Follow up on scheduling of Prehn/Hodge mediation;
2/4/2013	MOR	1.4	315.00	Review client-provided information on various (9) complaints organized and documented by D. Prehn (.7); receive and review additional claim substantiation information from D. Prehn (.3); receive and review email and attached mediation agreement and other information from J. Magel regarding Prehn mediation (.2); exchange emails with D. Prehn regarding deadlines set forth in mediation agreement (.2);
2/4/2013	TMH	0.8	80.00	Review and analyze D. Prehn's narratives regarding back salary, loans, first quarter 2011 bonus, and Hodge's loan and truck loan issues;
2/5/2013	TMH	5.8	580.00	Review and analyze D. Prehn's narratives regarding Hodge's violation of non-compete and rigged auction (.8); review and analyze factual sections in pleadings and discovery responses (.8); prepare draft of sections of the mediation statement (2.6); series of telephone conferences with D. Prehn regarding factual issues (.4); begin review of documents identified by D. Prehn which support the 9 identified major complaints against the defendants (1.2);
2/5/2013	MOR	0.7	157.50	Receive and review email communication from D. Prehn regarding his revisions to complaint 1 and complaint 6 (.2); review facts surrounding Prehn buyout offer (.3); receive and review email from D. Prehn and attached term sheet for Source stock sale (.2);
2/6/2013	MOR	0.7	157.50	Receive and review email regarding D. Prehn's complaint 8 (.2); conference with paralegal and associate counsel in preparation for upcoming depositions (.5);

Date	Initials	Hours	Amount	Fee Description
2/6/2013	TMH	8.2	820.00	Review and analyze D. Prehn's narratives regarding Hodge's misappropriation of Source 1 funds for personal gain and diversion of Source 1 assets (.9); continue review of documents identified by D. Prehn which support the 9 identified major complaints against the defendants (2.7); review and analyze documents exchanged in discovery the 9 identified major complaints against the defendants (1.4); continue drafting sections of the mediation statement (1.1); series of telephone conferences with D. Prehn regarding factual issues (.3); prepare exhibits to mediation statement (1.3); conference with Mike Roe and Matt McGee regarding draft mediation statement (.5);
2/6/2013	MJM	9.0	1,395.00	Review and analyze evidence provided by D. Prehn and prepare mediation statement;
2/7/2013	MJM	0.5	77.50	Finalize mediation statement;
2/7/2013	TMH	1.8	180.00	Revise and finalize mediation statement and exhibits thereto (1.0); begin review of file and documents exchanged in discovery, and identify potential documents for deposition of M. Hodge (individually, Source 1 and Source 2) (.8);
2/7/2013	MOR	3.1	697.50	Review notes and file (.3); review pleadings (1.2); prepare for conference call (.3); conference call with D. Prehn, D. Bandak and Matt McGee regarding litigation strategy and in preparation for February 8 mediation (.5); complete revisions to mediation statement and arrange for delivery to J. Magel prior to mediation (.6); receive and review email from D. Bandak with executed mediation agreement (.1); prepare short email to D. Bandak and D. Prehn regarding preparation for mediation (.1);
2/8/2013	MOR	4.8	1,080.00	Complete preparation for mediation (1.0); review mediation statement (1.); meet with D. Prehn (.2); participate in mediation with J. Magel (3.0); follow up with client and counsel following failed mediation in connection with preparation for depositions and trial (.5);
2/8/2013	TMH	6.1	610.00	Continue review of file and documents exchanged in discovery, and identify potential documents for deposition of M. Hodge (individually, Source 1 and Source 2) (4.5); conference with Mike Roe, Matt McGee, and D. Prehn regarding strategy for depositions through trial (1.4); correspond with court reporters in Boise and North Carolina regarding upcoming depositions (.2);

Date	Initials	Hours	Amount	Fee Description
2/8/2013	MJM	1.5	232.50	Analyze issues of proof and organize documents for deposition of Source 1;
2/9/2013	MJM	-	-	NO CHARGE Aid in the location and organization of documents in preparation for deposition of Source 1 (2.0);
2/9/2013	TMH	10.5	1,050.00	Continue review of file and documents exchanged in discovery, and identify potential documents for deposition of M. Hodge (individually, Source 1 and Source 2) (8.3); preparation of exhibits for the 30(b)(6) deposition The Source Store, LLC (2.2);
2/9/2013	MOR	5.0	1,125.00	Prepare for depositions;
2/10/2013	MOR	5.4	1,215.00	Prepare for depositions (4.2); meet with D. Prehn to review documents and other evidence in preparation for depositions (1.2);
2/11/2013	MOR	11.2	2,520.00	Complete preparation for Source 1 deposition (.8); conduct Source 1 deposition (7.0); meet with client following deposition to follow up on factual and other issues raised therein (.5); begin preparation for Source 2 deposition (.5); conference with paralegal (.5); conference with associate counsel (.4); review additional documentation (1.2); meet briefly with opposing counsel regarding evidentiary issues (.3); follow up on Source 2 financial information previously omitted from discovery responses (.5); receive and review additional research and substantiation information from D. Prehn regarding Source 2 claims (.5);
2/11/2013	MJM	0.8	124.00	Analyze unproduced documents by Source 2 and correspondence with counsel for Source 2 regarding the same;
2/11/2013	TMH	10.9	1,090.00	Continue review of file and documents exchanged in discovery, and identify potential documents for deposition of M. Hodge (individually, Source 1 and Source 2) (3.8); prepare additional exhibits for deposition of The Source Store, LLC (1.1); conference with Mike Roe and D. Prehn regarding deposition and strategy (1.0); preparation of exhibits for the 30(b)(6) deposition The Source, LLC (2.1); preparation of exhibits for deposition of M. Hodge, individually (2.9);

Date	Initials	Hours	Amount	Fee Description
2/12/2013	TMH	5.3	530.00	Continue preparation of exhibits for deposition of M. Hodge, individually (1.6); prepare notice of deposition of J. Arp for February 25, 2013 (.3); review and analyze recording of partner meetings in 2010 and 2012 and identify sections for potential use in depositions (1.6); review additional Source 2 financials and preparation of same for deposition exhibits (1.1); conference with Mike Roe and D. Prehn regarding deposition testimony and exhibits (.7);
2/12/2013	MJM	0.2	31.00	Conference with counsel for Source 2 regarding supplementation of discovery;
2/12/2013	MOR	11.6	2,610.00	Complete preparation for Source 2 deposition (.9); meet with D. Prehn prior to deposition (.2); conference with paralegal and associate counsel regarding supplemental information to be provided by E. Guerricabeitia (.3); conduct deposition of Source 2 (5.0); follow up on factual, evidentiary and other issues raised by Source 2 testimony (.5); meet with D. Prehn (.4); conference with associate attorney and paralegal regarding preparation for M. Hodge deposition (.6); prepare for M. Hodge deposition (2.1); review and analyze documentary evidence to be used in M. Hodge deposition (.6); receive and review two emails and attached supplemental information from E. Guerricabeitia (.8); exchange emails with D. Prehn regarding date of official dissolution (.2);
2/13/2013	MOR	10.2	2,295.00	Complete preparation for M. Hodge deposition (1.1); meet with D. Prehn prior to deposition to review additional documentary evidence (.4); conference with associate attorney and paralegal regarding final M. Hodge deposition exhibits (.3); conduct deposition of M. Hodge (6.5); meet briefly follow deposition with counsel for M. Hodge and counsel for C. Claiborne (.4); work on possible settlement with C. Claiborne (.2); conference with client regarding settlement with C. Claiborne and/or M. Brown (.3); begin review of documents for deposition of M. Brown to be conducted on February 15 (.5); review in detail Source 2 book orders report and related financial information (.5);
2/13/2013	TMH	1.3	130.00	Prepare additional deposition exhibits for the deposition of M. Hodge, individually (.7); review of file and documents exchanged in discovery, and identify potential documents for deposition of M. Brown (.6);

Date	Initials	Hours	Amount	Fee Description
2/14/2013	TMH	2.8	280.00	Review correspondence from E. Guerricabeitia regarding documents produced by Syringa Bank and BodyBuilding.com under subpoena (.1); prepare responsive correspondence to E. Guerricabeitia (.2); preparation of electronic copy of documents, produced by Syringa Bank and BodyBuilding.com under subpoena, for opposing counsel (.3); continue review of file and documents exchanged in discovery, and identify potential documents for deposition of M. Brown (2.1); conference with Mike Roe regarding same (.1);
2/14/2013	MOR	3.1	697.50	Receive and review email and attached correspondence from E. Guerricabeitia regarding documents produced by Syringa Bank and BodyBuilding.com in third party subpoena (.2); receive and review email from E. Guerricabeitia to Judge Owens' chambers regarding February 21 status conference (.1); arrange for delivery of Syringa and BodyBuilding.com documents to E. Guerricabeitia (.3); prepare for M. Brown deposition (1.5); phone call to D. Prehn (.4); meet with D. Prehn regarding key questions for M. Brown deposition (.5);
2/15/2013	MOR	7.8	1,755.00	Complete preparation for M. Brown deposition (.5); meet with D. Prehn prior to deposition (.3); meet with paralegal to review final M. Brown deposition exhibits (.5); conduct deposition of M. Brown (5.2); meet with B. Boyle following deposition to discuss settlement (.4); meet with D. Prehn to discuss settlement and trial strategy (.3); meet with associate counsel regarding outstanding evidentiary/deposition matters and trial preparation (.4); exchange emails with B. Boyle regarding C. Claiborne (.2);
2/15/2013	TMH	0.8	80.00	Prepare additional exhibits for the deposition of M. Brown (.7); conference with Mike Roe regarding same (.1);
2/18/2013	MOR	1.5	337.50	Receive and review email and summary information from D. Prehn to D. Bandak (.3); phone call to D. Prehn regarding trial strategy (.3); exchange emails with E. Guerricabeitia regarding C. Claiborne deposition (.2); receive and review email and attached ownership proposal spreadsheet from D. Prehn (.3); review questions and issues discussed with C. Claiborne at meeting scheduled for Tuesday, February 19 (.2); phone call to B. Boyle regarding C. Claiborne deposition (.2);

Date	Initials	Hours	Amount	Fee Description
2/19/2013	MOR	2.1	472.50	Prepare for meeting (.2); meet with D. Prehn, C. Claiborne and B. Boyle to negotiate walk away settlement between plaintiffs and defendant/counter claimant C. Claiborne (.3); phone call to D. Prehn regarding M. Brown strategy and upcoming status conference (.4); conference with paralegal regarding status conference and discussion of trial exhibits and witnesses and advisability of stipulating to the same (.3); receive and review email and attached proposed stipulation to dismiss Source 1 from J. Geier (.2); analyze issues raised by Source 1's request for stipulation (.4); receive and analyze co-counsel's analysis of Source 1 dismissal proposition (.3);
2/20/2013	MOR	1.1	247.50	Phone call to D. Prehn regarding N. Stuart (.2); receive and review email from D. Prehn regarding N. Stuart (.1); receive and review email from E. Guerricabeitia regarding audio recordings (.1); arrange for delivery of supplemental information to E. Guerricabeitia (.2); receive and review second correspondence from E. Guerricabeitia regarding tender of money for shaker cup molds (.1); receive and review email from court clerk regarding status conference (.1); receive and review email from J. Geier regarding status conference (.1); receive and review third email from E. Guerricabeitia regarding N. Stuart deposition (.1); prepare short email to court clerk regarding personal appearance at status conference scheduled for Thursday, February 21 (.1);
2/20/2013	MJM	1.1	170.50	Analyze claims in Second Amended Complaint in order to propose dismissal of certain claims and research Idaho law concerning auction claims to determine likelihood of success if plaintiffs do not proceed;

Date	Initials	Hours	Amount	Fee Description
2/21/2013	MOR	3.4	765.00	Prepare for status conference (.5); attend status conference in Judge Owen's chambers (.3); phone call to D. Prehn regarding status conference (.2); continue work on settlement with C. Claiborne and possible settlement with M. Brown (.2); analyze 19 causes of action in second amended complaint in order to asses advisability of stipulating to dismiss a number of such claims (.5); analyze Source 1's request for stipulation to dismiss and threat to bring motion to dismiss in the event stipulation is not reached (.3); multiple phone calls with D. Prehn regarding C. Claiborne, M. Brown and release of certain claims (.5); receive and review email and attached spreadsheet from D. Prehn regarding damage analysis (.3); phone call to D. Prehn regarding damages (.2); undertake additional analysis on derivative versus direct claims brought by plaintiffs and implications at trial for releasing derivative claims (.2); conference with paralegal regarding ordering deposition transcripts (.1); exchange emails with C. Crafts regarding offer to dismiss M. Brown as defendant (.1);
2/21/2013	MJM	0.3	46.50	Analysis with Mike Roe regarding proposed dismissal of certain claims and potential damages models, as well as the issues associated with maintaining direct and derivative claims in the same action;
2/22/2013	MJM	1.8	279.00	Analyze demand from Hodge regarding status of tendered $110,000 (0.5); analyze authority provided by Source 1 related to dismissal of derivative claims or disqualification of counsel for plaintiffs (1.3);
2/22/2013	MOR	0.8	180.00	Phone call to D. Prehn regarding J. Arp deposition (.3); conference with paralegal regarding vacating J. Arp deposition and arrangements with court reporter and hotel room in order to save clients money based on assumption that J. Arp would not show (.2); receive and review correspondence from E. Guerricabeitia regarding tender of funds for shaker cup molds (.1); review and revise draft letter to opposing counsel proposing the dismissal of 8 of 19 causes of action in second amended complaint; arrange for delivery to counsel (.2);
2/23/2013	MOR	0.2	45.00	Review letter from E. Guerricabeitia regarding stipulations to dismiss certain causes of action from Second Amended Complaint;

Date	Initials	Hours	Amount	Fee Description
2/25/2013	MOR	0.5	112.50	Receive and review Order on Fees Based on Plaintiffs' Motion to Compel (.2); arrange for responses to J. Geier and E. Guerricabeitia regarding dismissal of certain claims by plaintiffs (.3);
2/25/2013	MJM	3.5	542.50	Analyze Idaho law and other jurisdictions regarding propriety of direct and derivative claims in the same litigation (2.5); research regarding bringing the issue of attorney fees before the court on dismissed claims prior to the trial (0.5); correspondence with counsel for Source 1, Hodge, and Source 2 regarding outstanding issues associated with dismissal and derivative claims (0.5);
2/25/2013	TMH	0.6	60.00	Research regarding dismissal of claims and attorney fee issues associated therewith (.5); telephone conference with D. Prehn and D. Bandak regarding deposition of J. Arp and Court's order awarding fees and costs regarding motion to compel against Source 2 (.1);
2/26/2013	MJM	4.0	620.00	Research and analyze authorities regarding conflicts and issues associated with the prosecution of direct and derivative claims (3.2); correspondence and analysis of correspondence with opposing counsel regarding propriety of derivative claims (0.8);
2/26/2013	MOR	1.5	337.50	Continue correspondence and negotiation with opposing counsel regarding dismissal of claims (.3); follow up on C. Claiborne and M. Brown walk-away stipulations (.2); receive and review email from J. Geier regarding derivative actions (.2); receive and review email from E. Guerricabeitia regarding derivative actions (.1); receive and review second email from J. Geier with attached case law (.2); finalize and arrange for deliver of letter to opposing counsel regarding plaintiffs' willingness to stipulate to dismissal of certain claims (.3); meet with associate counsel to analyze prevailing party/attorney fee issues as the same relate to the release of certain causes of action (.2);
2/28/2013	MOR	0.7	157.50	Prepare for meeting (.2); meet with E. Guerricabeitia and Matt McGee in an attempt to negotiate dismissal of certain claims and advance clients' interests regarding prevailing party analysis (.5);
2/28/2013	MJM	1.7	263.50	Meeting with counsel for Hodge regarding proposed dismissal of claims (1.0); research regarding attaching liability to Hodge for loans/back pay (0.7);

Date	Initials	Hours	Amount	Fee Description
2/28/2013	TMH	1.3	130.00	Review trial scheduling order and review Idaho Rules of Civil Procedure regarding pre-trial procedures (.4); prepare list of pre-trial issues to address (.4); prepare correspondence to Judge Owen's clerk regarding trial exhibits (.1); correspond with court reporter regarding depositions of defendants (.1); research regarding Judge Owen (.3);
3/1/2013	TMH	0.4	40.00	Correspond with Judge Owen's clerk regarding trial and pre-trial issues (.2); review and analyze Judge Owen's civil trial procedures (.2);
3/1/2013	MJM	1.2	186.00	Receive, review and analyze joint motion to dismiss derivative claims filed by Source 1, Source 2, and Hodge (0.9); correspondence with counsel for Brown and Claiborne regarding walk-away agreements (0.3);
3/1/2013	MOR	0.7	157.50	Conference with associate attorney (.2); follow up on dismissal of counterclaim and claims against M. Brown (.1); receive and review joint motion to dismiss derivative claims filed by Source 1, Source 2 and M. Hodge (.4);
3/2/2013	MOR	0.3	67.50	Follow up on statements from and by J. Welch;
3/3/2013	MOR	1.1	247.50	Complete review of joint motion to dismiss, brief in support of motion and affidavit of E. Guerricabeitia (.4); review case(s) cited in memorandum (.7);
3/4/2013	MOR	0.9	202.50	Phone call to D. Prehn regarding pending motions and status of litigation (.4); receive and review email from E. Guerricabeitia regarding stipulation and dismissal of certain claims (.2); review final proposed stipulation order for dismissal of certain claims (.1); receive and review email from B. Boyle regarding stipulation (.1); receive and review emails from J. Geier and E. Guerricabeitia regarding stipulation (.1);
3/4/2013	MJM	6.0	930.00	Review and analyze motion to dismiss derivative claims (1.0); correspondence with opposing counsel concerning failure to remove social security numbers in filings with the court (0.3); research Idaho law and draft briefing in opposition to the defendants' motion to dismiss on grounds of timeliness (3.8); correspondence with counsel regarding dismissal of certain of plaintiff's claims, as well as plaintiffs' Brown and Claiborne (0.6); review and analyze stipulation to dismiss Claiborne prepared by counsel for Claiborne (0.3);

Date	Initials	Hours	Amount	Fee Description
3/4/2013	TMH	4.4	440.00	Review memorandum in support of joint motion to dismiss derivative claims and affidavit in support (.3); attention to issues concerning failure of defendants' counsel to redact personal information from exhibits filed with the court (.1); prepare plaintiffs' list of trial witnesses (.3); prepare plaintiffs' list of trial exhibits (pleading) (.3); begin review of documents exchanged in discovery and deposition exhibits, for purposes of compiling trial exhibits, and draft list of potential trial exhibits (1.9); review and revise draft stipulation to seal Exhibit H to Affidavit of Ed Guerricabeitia and order thereon (.2); conference with Mike Roe regarding same (.1); review Source 2 non-disclosure agreement as it may apply to deposition testimony (.1); review transcript of partner meeting with M. Balder in April 2012 (1.1);
3/5/2013	TMH	0.8	80.00	Continue review of documents exchanged in discovery and deposition exhibits, including PST e-mail files, for purposes of compiling trial exhibits (.8);
3/5/2013	MJM	0.3	46.50	Prepare stipulation to dismiss Brown and correspond with counsel for Brown regarding the same;
3/5/2013	MOR	0.8	180.00	Conference with paralegal (.2); conference with associate attorney regarding opposition to Joint Motion to Dismiss (.3); receive and review correspondence from E. Guerricabeitia regarding indebtedness owed by Source 1 to D. Prehn (.2); receive and review email and attachment from B. Boyle (.1);
3/6/2013	MOR	0.7	157.50	Receive and review Amended Affidavit of E. Guerricabeitia in Support of Joint Motion to Dismiss and Stipulation to Seal (.2); receive and begin review of Rule 30(b)(6) deposition transcript of Source 2 (.5);
3/6/2013	TMH	2.8	280.00	Review deposition testimony of M. Hodge as (30)(b)(6) witness for Source 1, noting additional documents to be produced and inconsistencies in his testimony (1.6); telephone conference with J. Welch regarding M. Hodge and Source 1 (.3); continue review of documents exchanged in discovery and deposition exhibits, including PST e-mail files, for purposes of compiling trial exhibits (.9);

Date	Initials	Hours	Amount	Fee Description
3/7/2013	TMH	1.2	120.00	Continue review of deposition testimony of M. Hodge as (30)(b)(6) witness for Source 1, noting additional documents to be produced and inconsistencies in his testimony (1.0); conference with Mike Roe regarding additional documents to be produced and inconsistencies in M. Hodge's testimony (.2);
3/7/2013	MOR	0.6	135.00	Receive and review draft Stipulation for Voluntary Dismissal with Prejudice from B. Boyle (.1); receive and begin review of draft deposition transcript of M. Hodge (.5);
3/7/2013	MJM	3.4	527.00	Correspondence with counsel concerning voluntary dismissal of certain claims (0.4); review and analyze authority provided in support of motion to dismiss and analyze authority concerning adequacy of representation and futility of demand upon the company (3.0);
3/8/2013	MJM	6.0	930.00	Research and analyze Idaho law regarding derivative litigation and propriety and timeliness of the defendants' motion to dismiss (3.5); research and analyze extra-jurisdictional authority regarding derivative litigation in preparation to file response in opposition to defendants' motion to dismiss (2.5);
3/8/2013	MOR	0.1	22.50	Receive and review proposed Stipulation Order for Dismissal from C. Crafts;
3/8/2013	TMH	5.3	530.00	Review deposition testimony of M. Hodge as (30)(b)(6) witness for Source 2, noting additional documents to be produced and inconsistencies in his testimony (2.8); series of conferences with Matt McGee regarding issues concerning opposition to motion to dismiss (.8); research regarding evidence of prior inclinations of defendants' counsel to dismiss plaintiffs' derivative claims (.3); prepare affidavits of D. Prehn and D. Bandak regarding amended complaint (.3); review deposition testimony of M. Hodge, individually, noting additional documents to be produced and inconsistencies in his testimony (1.1);
3/10/2013	MJM	5.0	775.00	Draft objection and response in opposition to motion to dismiss;
3/11/2013	MJM	7.7	1,193.50	Draft objection and response in opposition to motion to dismiss;

Date	Initials	Hours	Amount	Fee Description
3/11/2013	MOR	2.7	607.50	Continue work on Opposition to Joint Motion to Dismiss Derivative Claims (1.1); conference with paralegal (.2); conference with associate attorney regarding additional research and case law (.2); phone call to D. Prehn (.7); receive and begin review of deposition transcript for M. Brown (.5);
3/11/2013	TMH	4.2	420.00	Review and analyze correspondence from M. Hodge for evidence of his intent to use Source 1 funds to pay his attorney fees (.6); strategy conference with Mike Roe and Matt McGee in preparation for trial (.6); prepare correspondence to E. Guerricabeitia and J. Geier regarding documents disclosed by M. Hodge during deposition, as well as additional documents missing from Source 1's productions (.9); review Source 1 and Source 2 bank statements, other financial records, and PST e-mail files produced by Source 1 juxtaposed with deposition testimony and identify discrepancies in M. Hodge's testimony (2.1);
3/12/2013	TMH	8.1	810.00	Continue review deposition testimony of M. Hodge, individually, noting additional documents to be produced and inconsistencies in his testimony (1.8); continue review of Source 1 and Source 2 bank statements, other financial records, and PST e-mail files produced by Source 1 juxtaposed with deposition testimony and identify discrepancies in M. Hodge's testimony (4.1); track exchange of funds between Source 1 and Source 2 bank accounts (.8); conference with Mike Roe regarding same (.2); continue preparation of proposed list of trial exhibits and identification of source of the documents to avoid foundational challenges at trial (1.2);
3/12/2013	MOR	3.2	720.00	Work on witness summaries (.8); receive and review email from E. Guerricabeitia regarding valuation prepared by D. Prehn in 2002 and 2003 (.2); receive and review email from J. Geier regarding bates ranges in Report of Wind-Up (.1); receive and begin review of Rule 30(b)(6) deposition transcript for Source 1 (.5); review Source 2 Facebook screen grabs (.3); follow up on payment by Source 2 and M. Hodge of sanctions imposed for discovery abuse (.2); work on issues related to stipulation of exhibits (.3); receive and begin review Rule 30(b)(6) deposition transcript for Source 2 (.5); prepare email to E. Guerricabeitia with deposition excerpts regarding valuation (.3);

Date	Initials	Hours	Amount	Fee Description
3/13/2013	MOR	1.7	382.50	Review, revise and arrange for filing of Opposition to Defendant's Motion to Dismiss Derivative Actions (.5); research LLC Act regarding distributions and fiduciary duties (1.2);
3/13/2013	MJM	1.0	155.00	Revise, finalize and file objection and response to motion to dismiss;
3/13/2013	TMH	5.4	540.00	Correspond with court reporter regarding deposition transcripts and exhibits (.2); prepare responsive correspondence to E. Guerricabeitia regarding documents identified by M. Hodge during depositions (.2); review and analyze Idaho Rules of Civil Procedure regarding contempt actions in civil cases (.3); review and revise objection and opposition to defendants' motion to dismiss (1.1); prepare correspondence to E. Guerricabeitia regarding payment of $2,000 attorney fee award regarding motion to compel against Source 2 (.2); continue preparation of proposed list of trial exhibits and identification of source of the documents to avoid foundational challenges at trial (3.4);
3/14/2013	TMH	2.7	270.00	Continue preparation of proposed list of trial exhibits and identification of source of the documents to avoid foundational challenges at trial (1.9); trial strategy conference with Mike Roe and Matt McGee (.8);
3/14/2013	MJM	2.0	310.00	Research and analyze elements of causes of action remaining in the case in order to draft trial brief (1.5); develop strategy for trial preparation (0.5);
3/14/2013	MOR	1.0	225.00	Receive and review final deposition transcripts of M. Hodge and M. Brown (.2); exchange emails with E. Guerricabeitia regarding stipulation to exhibits (.3); review selected exhibits from four depositions in preparation and connection with stipulation negotiations (.5);
3/15/2013	MOR	3.9	877.50	Prepare for call (.2); phone call to D. Prehn (.5); continue review of deposition transcripts and witness summaries (.8); review portions of exhibits used in four depositions in connection with possible cross-examination (1.0); review portions of bank statements and Source 1 financial statements (1.2); exchange emails with E. Guerricabeitia and J. Geier regarding possible meeting on March 18 to review exhibits (.2);
3/15/2013	MJM	4.5	697.50	Research and analyze elements of causes of action remaining in the case in order to draft trial brief (4.2); correspondence with counsel regarding exhibits (0.3);

Date	Initials	Hours	Amount	Fee Description
3/15/2013	TMH	4.3	430.00	Continue preparation of proposed list of trial exhibits and identification of source of the documents to avoid foundational challenges at trial (2.2); continue review of Source 1 and Source 2 bank statements, other financial records, correspondence, and PST e-mail files produced by Source 1 juxtaposed with deposition testimony and identify discrepancies in depositions testimony (2.1);
3/16/2013	TMH	11.0	1,100.00	Continue preparation of proposed list of trial exhibits and identification of source of the documents to avoid foundational challenges at trial (2.1); prepare for and meet with Mike Roe and D. Prehn to review proposed exhibits (2.6); continue review of Source 1 and Source 2 bank statements, other financial records, correspondence, and PST e-mail files produced by Source 1 juxtaposed with deposition testimony and identify discrepancies in depositions testimony (4.9); conference with Mike Roe and Matt McGee regarding same (.5); prepare correspondence to J. Welch regarding M. Hodge's testimony (.3); prepare correspondence to D. Prehn regarding deposition testimony by M. Hodge and M. Brown (.3); prepare correspondence to D. Prehn regarding additional trial exhibits (.3);
3/16/2013	MJM	6.5	1,007.50	Draft, revise, and finalize trial brief;
3/16/2013	MOR	7.8	1,755.00	Meet with Matt McGee, Tiffiny Hudak and D. Prehn for trial preparation (2.5); review exhibits (1.2); review deposition transcripts (2.0); review all pleadings (1.1); begin work on direct examination outlines (1.0);
3/17/2013	MOR	4.9	1,102.50	Continue work on compilation of exhibits, deposition excerpts and other evidence related to claims and damage calculations (2.5); review evidence relating to prepaid plastics, second mold deposit and M. Hodge's salary as liquidator (2.4);
3/17/2013	TMH	4.5	450.00	Continue preparation of proposed list of trial exhibits and identification of source of the documents to avoid foundational challenges at trial (1.9); continue review of Source 1 and Source 2 bank statements, other financial records, correspondence, and PST e-mail files produced by Source 1 juxtaposed with deposition testimony and identify discrepancies in depositions testimony (2.4); correspond with D. Prehn regarding trial exhibits (.2);

Date	Initials	Hours	Amount	Fee Description
3/18/2013	TMH	9.7	970.00	Conference with Mike Roe regarding trial exhibits (.6); revise and finalize list of exhibits and witnesses for trial (2.7); review plaintiffs' complaint and dismissal of certain causes of action and identify remaining causes of action (.8); prepare for and meet with Mike Roe, E. Guerricabeitia and Judy Geier to review trial exhibits and discuss stipulating to same (2.0); correspond with D. Prehn regarding plaintiffs' trial exhibits, including review of additional trial exhibits (.8); prepare for and attend pretrial conference (1.2); trial strategy conference with Mike Roe and Matt McGee (1.3); prepare correspondence to D. Prehn and D. Bandak regarding defendants' trial exhibits and witnesses (.3);
3/18/2013	MOR	4.8	1,080.00	Review notes and file (.1); prepare for meeting (.3); meet with paralegal, E. Guerricabeitia and J. Geier to negotiate stipulated exhibits for upcoming court trial (.3); prepare for pretrial (.5); attend pretrial conference in Judge Owen's chambers (.3); meet with paralegal and associate attorney to further develop evidence and factual matters for trial (1.0); receive and review email from D. Prehn regarding possible additions to plaintiff's exhibit list (.2); receive and review exhibit list and witness list from defendants' counsel (.4); complete plaintiffs' exhibit list and witness list (.4); receive and review emails from E. Guerricabeitia and J. Geier regarding witness and exhibit lists (.2); research issue of Source 2's previously undisclosed witnesses (.5); receive and review email from D. Prehn with comments regarding BodyBuilding.com witnesses (.2);
3/18/2013	MJM	2.0	310.00	Review and analyze damage model and research lost profits as viable damages;
3/18/2013	MJM	1.0	155.00	Conference regarding trial preparation and strategy;
3/19/2013	MJM	0.1	15.50	Correspondence with counsel for Source 2 regarding acceptance of subpoena for certain individual employees;
3/19/2013	MJM	0.4	62.00	Correspondence with client regarding lost profits analysis;
3/19/2013	MJM	1.7	263.50	Review and analyze issues regarding authenticity and admissibility of documents produced by opposing party in discovery;

Date	Initials	Hours	Amount	Fee Description
3/19/2013	MOR	3.4	765.00	Prepare for call (.2); conference call with D. Prehn and D. Bandak regarding litigation strategy and availability for witness preparation (1.0); review audio recordings of partner calls and calls with outside counsel (.5); research issues related to M. Baldner and expected testimony at trial (.6); receive and review summary of transfers from Source 1 dissolution account to Source 2 (.4); work on loss profit damage model (.5); exchange emails with D. Prehn regarding conversations with M. Butkevich (.2);
3/19/2013	TMH	6.3	630.00	Review discovery requests propounded by M. Hodge and Source 2 and prepare supplemental discovery responses thereto (2.2); telephone conference with D. Prehn regarding transfer of funds between Source 1 and Source 2 accounts (.1); prepare trial subpoenas to M. Brown, B. Bews, J. Young, M. Baldner and N. Stuart (.5); correspond with process server regarding service of subpoena on M. Baldner and N. Stuart (.1); conference with Mike Roe and Matt McGee regarding trial evidence issues (.6); process trial exhibits designated by M. Hodge and Source 2 (.8); prepare correspondence to D. Prehn and D. Bandak regarding trial exhibits designated by M. Hodge and Source 2 (.3); prepare working copy of plaintiffs' exhibit list, categorically, for use in preparing for trial (1.4); correspond with D. Prehn regarding trial exhibits (.3);
3/20/2013	TMH	9.1	910.00	Prepare and mark plaintiffs' trial exhibits (3.8); review audio recordings of meetings held on March 22, 2012 (1.9); review deposition testimony of M. Brown (.8); correspond with E. Guerricabeitia regarding subpoenas and trial exhibits (.2); review and analyze motion to quash subpoena to M. Baldner and supporting pleadings (.3); correspond with process server regarding service of subpoenas on M. Brown, J. Young, and B. Bews (.1); process trial exhibits designated by Source 1 (.3); prepare correspondence to D. Prehn and D. Bandak regarding Source 1's trial exhibits (.2); review and analyze Hodge's and Source 2's motion to exclude plaintiffs' expert witnesses and expert opinions on damages and valuation (.5); review of M. Hodge's testimony regarding J. Welch in preparation for conference (.6); telephone conference with J. Welch and Mike Roe regarding testifying at trial (.4);

Date	Initials	Hours	Amount	Fee Description
3/20/2013	MOR	7.1	1,597.50	Continue trial preparation and review deposition transcripts (.8); review exhibits (1.2); work on evidentiary issues based on assumed parties' failure to stipulate to exhibits at trial (1.0); research issues related to hearsay exceptions, including business records and admissions of party opponent and agents (.5); research and work on motion to exclude late-disclosed witnesses (.5); phone call to E. Guerricabeitia regarding requested stipulation to trial exhibits (.4); phone call to D. Prehn regarding additional witnesses and rebuttal witnesses (.5); receive and review email from E. Guerricabeitia regarding trial exhibits (.1); phone call to C. Nicholson regarding subpoena of M. Baldner for trial (.3); receive and review email from E. Guerricabeitia regarding trial exhibits and protocol with respect thereto (.2); receive and review M. Baldner's Motion to Quash Trial Subpoena to Michael Baldner (.5); receive and review email from D. Prehn and attached draft summary exhibit regarding diversion of Source 1 funds (.5); receive and review additional email from D. Prehn regarding damages summary (.3); receive and review additional email from D. Prehn regarding future lost profits (.3);
3/20/2013	MJM	1.3	201.50	Review and analyze trial witnesses and trial exhibits produced by Source 1, Source 2 and Hodge;
3/20/2013	MJM	3.2	496.00	Draft, revise and finalize motion to exclude undisclosed witnesses, memorandum in support of motion to exclude undisclosed witnesses, and affidavit in support of motion to exclude undisclosed witnesses;
3/21/2013	MJM	3.9	604.50	Analyze and develop claims and damage model in preparation to prepare case in chief;
3/21/2013	MOR	4.9	1,102.50	Continue work on trial preparation and phone call to C. Nicholson (.5); review and research M. Baldner issue relating to conflicts of interest and possible trial testimony and plaintiffs' use as a rebuttal witness (1.2); prepare for conference call (.2); conference call with D. Prehn and D. Bandak (1.0); review portions of deposition exhibits (.5); research evidentiary issues related to hearsay exceptions and use of summary exhibits (.8); receive and review email from D. Prehn and attached damage summaries (.7);

Date	Initials	Hours	Amount	Fee Description
3/21/2013	TMH	11.1	1,110.00	Continue preparation and marking plaintiffs' trial exhibits (5.5); prepare working copy for Mike Roe (.4); review and analyze damages calculations prepared by D. Prehn (.6); prepare for and attend trial strategy conference with Mike Roe and Matt McGee (3.8); review and analyze issues concerning damages and supplementation of discovery (.8);
3/22/2013	TMH	8.7	870.00	Review and analyze plaintiffs' trial exhibits prior to dissemination to opposing counsel (2.2); review and analyze defendants' trial exhibits (2.9); correspond with Mike Roe regarding emails designated by defendants (.3); review and revise opposition to defendants' motion to exclude (.6); review and analyze transcript of March 22, 2012 partner call (.9); prepare second supplemental discovery responses regarding damages and trial exhibits (.3); research regarding salary payments made to M. Hodge from April 2012 to January 2013 (1.4); prepare memorandum to Mike Roe regarding same (.1);
3/22/2013	MOR	5.2	1,170.00	Continue trial preparation and work on deposition excerpts and cross-examination outlines (1.5); continue review of proposed trial exhibits and foundational issues (1.0); review additional Idaho case law and cases from other jurisdictions regarding foundation and hearsay exceptions (.8); review proposed exhibits from Source 1, Source 2 and M. Hodge (.9); review defendants' exhibits with possible relationship to D. Bandak (.4); receive and review motion filed by J. Geier requesting delivery of plaintiffs' exhibits (.1); research issues related to M. Hodge's salary as liquidator (.5);
3/22/2013	MJM	2.0	310.00	Conference regarding finalizing claims and damage model in preparation to prepare case in chief;
3/22/2013	MJM	4.0	620.00	Draft, revise and finalize response to motion to exclude R. Goldston's testimony, as well as affidavit in support;
3/23/2013	MJM	6.8	1,054.00	Draft trial brief by addressing facts to be show to the elements of pleaded causes of action;
3/23/2013	MOR	7.1	1,597.50	Work on trial preparation and continue review of exhibits and deposition testimony (3.5); work on outlines for direct and cross-examination (3.6);

Date	Initials	Hours	Amount	Fee Description
3/23/2013	TMH	9.0	900.00	Prepare for and attend trial strategy conference with Mike Roe, Matt McGee and Don Prehn (6.1); review trial exhibits and determine amount of legal fees paid by Source 1 (.9); continue review and analysis of Hodge and Source 2's trial exhibits (.8); prepare amended exhibit list for trial (.4): redact protected information from trial exhibits (.8);
3/24/2013	TMH	7.0	700.00	Continue redacting protected information from trial exhibits (3.3); prepare for and attend trial strategy conference with Mike Roe, Matt McGee and D. Prehn (3.7);
3/24/2013	MOR	4.2	945.00	Continue trial preparation and research issues related to admissions by party opponent and admissions by agent of party opponent (2.5); review emails between M. Hodge and M. Baldner (.4); review deposition testimony related to M. Baldner and possible testimony and M. Baldner and N. Stuart (.5); review Idaho law related to client-accountant privilege (.3); receive and review updated claim and damage summaries from D. Prehn (.5);
3/24/2013	MJM	3.0	465.00	Finalize draft trial brief;
3/24/2013	MJM	1.2	186.00	Draft response to motion to quash and affidavit in support of motion to quash;
3/24/2013	MJM	2.6	403.00	Research waiver of attorney client privilege in preparation to respond to motion to quash subpoena of Baldner;
3/24/2013	MJM	0.7	108.50	Review Hodge's deposition testimony to locate examples of his waiver and invocation of attorney advice in defense of his actions;
3/25/2013	MJM	1.3	201.50	Revise and finalize response to motion to quash and affidavit in support thereof;
3/25/2013	MJM	1.5	232.50	Finalize exhibits regarding damages by confirming that underlying exhibits support each number reflected;

Date	Initials	Hours	Amount	Fee Description
3/25/2013	MOR	7.3	1,642.50	Multiple phone calls to D. Prehn regarding anticipated testimony on direct and cross-examination (1.2); conference with paralegal regarding reconciliation of exhibit lists (.4); conference with associate attorney regarding additional research on evidentiary issues (.5); work on response to M. Hodge and Source 2's motion to exclude plaintiffs' witnesses (.5); work on response to M. Baldner's motion to quash trial subpoena (.5); discuss N. Stuart issue with D. Prehn (.3); discuss E. Butkevich and M. Butkevich with D. Prehn as potential rebuttal witnesses (.4); work with paralegal to revise summary exhibits (1.5); work on damage model (2.0);
3/25/2013	TMH	9.6	960.00	Revise and finalize plaintiffs' amended exhibit list (.3); revise and finalize plaintiffs' illustrative exhibits (2.2); prepare credit card packet exhibits and redact protected information from same (2.8); trial strategy conferences with Mike Roe and Matt McGee regarding exhibits, witness preparation, responses to pending motions, supplemental discovery, and related trial matters (3.6); preparation of exhibit binders for opposing counsel (.7);
3/26/2013	TMH	9.9	990.00	Prepare amended damages exhibits (1.1); correspond with R. Goldston regarding trial testimony (.3); research regarding testimony of technical expert and begin outline for testimony regarding copying of Source 1's server (.6); trial strategy conferences with Mike Roe and Matt McGee regarding plaintiffs' theme at trial, witness preparation, corresponding trial exhibits, damages, and related matters (3.2); conference with D. Prehn and Mike Roe (.4); prepare correspondence to Ed Guerricabeitia and Judy Geier regarding revise exhibits 164 and 167 and discovery verification pages (.4); prepare exhibit packets related to case in chief claims (2.5); review deposition transcripts regarding testimony related to trial exhibits (1.4);
3/26/2013	MOR	3.7	832.50	Continue trial preparation and work on direct examination outline (2.1); receive and review email from E. Guerricabeitia with attached transcripts of March 22, 2012 meeting and November 20, 2010 partner meeting (.7); arrange for delivery of revised summary exhibits to E. Guerricabeitia and J. Geier (.2); receive and review email from D. Prehn regarding meeting transcripts (.2); prepare email/memorandum to D. Prehn and D. Bandak regarding transcripts and additional factual issues (.3); exchange emails with D. Prehn regarding transcripts (.2);

Date	Initials	Hours	Amount	Fee Description
3/26/2013	MJM	0.3	46.50	Review files related to stipulations for dismissal and correspond with counsel for Claiborne regarding walk-away;
3/26/2013	MJM	1.2	186.00	Research and analyze position that documents produced by the opposing party in discovery are presumptively authentic;
3/26/2013	MJM	4.5	697.50	Analyze exhibits necessary to use for case in chief and review foundation and necessary testimony regarding the same in light of opposing party's unwillingness to stipulate to exhibits;
3/27/2013	MJM	3.0	465.00	Develop strategy, approach and order related to presenting case in chief, including order of critical exhibits for each claim for damages and the general bad acts of M. Hodge;
3/27/2013	MJM	0.8	124.00	Review and analyze research memorandum regarding authentication and admissibility under the Idaho Rules of Evidence in preparation to address evidentiary challenges from opposing party;
3/27/2013	MJM	1.3	201.50	Review and analyze proposal related to stipulated exhibits from opposing counsel and communication with counsel regarding the same;
3/27/2013	MOR	5.8	1,305.00	Continue trial preparation and multiple phone calls to D. Prehn regarding testimony and exhibits (3.5); phone call to D. Bandak regarding travel schedule and availability for witness preparation (.3); multiple phone calls to E. Guerricabeitia regarding request to stipulate to exhibits (.3); receive and review multiple emails regarding Claiborne/Prehn stipulation for dismissal (.2); exchange emails with D. Bandak regarding history with M. Hodge (.2); receive and review letter from E. Guerricabeitia regarding proposed conditional stipulation to exhibits (.7); additional phone call to E. Guerricabeitia (.1); receive and review memorandum from associate attorney regarding authentication and admissibility of business records (.5);

Date	Initials	Hours	Amount	Fee Description
3/27/2013	TMH	12.5	1,250.00	Prepare exhibit packets related to M. Hodge bad acts (2.9); trial strategy conferences with Mike Roe and Matt McGee regarding plaintiffs' theme at trial, witness preparation, corresponding trial exhibits, damages, stipulated exhibits, and related matters (4.8); review and analyze correspondence from E. Guerricabeitia regarding stipulation to certain trial exhibits (.8); revise and finalize damages exhibits (1.9); prepare correspondence to E. Guerricabeitia and J. Geier regarding revised damages exhibit nos. 164, 165, 166, and 167 (.3); prepare stipulated trial exhibit list (1.8);
3/28/2013	TMH	7.4	740.00	Correspond with vendor regarding trial boards (.2); correspond with court reporter regarding original, sealed depositions and transcript of audio of April 2012 of partner meeting with M. Baldner (.3); revise and finalize stipulated trial exhibit list (.3); prepare correspondence to E. Guerricabeitia and J. Geier regarding stipulated trial exhibits (.3); continue preparation of exhibit packets related to M. Hodge bad acts (1.4); trial strategy conferences with Mike Roe and Matt McGee regarding plaintiffs' theme at trial, witness preparation, corresponding trial exhibits, damages, stipulated exhibits, and related matters (3.6); review and analyze non-disclosure agreement relevant to Source 2 documents and use of the same at trial (.3); review and analyze Idaho Rules of Civil Procedure and Idaho Rules of Evidence regarding exhibits and witnesses (.8); correspond with Judge Owen's clerk regarding trial issues (.2);

Date	Initials	Hours	Amount	Fee Description
3/28/2013	MOR	6.7	1,507.50	Continue trial preparation and make phone call to E. Guerricabeitia regarding exhibits (.4); phone call to C. Nicholson regarding M. Baldner and Motion to Quash Trial Subpoena (.5); continue work on damage calculations and testimony (2.0); receive and review fax message from B. Boyle regarding C. Claiborne (.1); receive and review email from C. Nicholson regarding M. Baldner and potential agreement to limit M. Baldner's testimony (.2); receive and review multiple emails from E. Guerricabeitia regarding stipulated exhibits (.3); receive and review email from J. Geier regarding refusal to stipulate to trial exhibits (.3); receive and review email from D. Prehn regarding calculations of M. Hodge's salary as liquidator (.3); receive and review resumes from D. Prehn and D. Bandak for incorporation into direct examination (.4); receive and review reply memorandum in support of motion to quash trial subpoena to M. Baldner from C. Nicholson (.5); review case law relating to potential M. Baldner testimony (.5); receive and review M. Hodge and Source 2's trial brief (.7); review cases cited therein (.4); review status of Source 2 Non-Disclosure Agreement (.3);
3/28/2013	MJM	0.8	124.00	Review and analyze November 2010 board meeting transcript;
3/28/2013	MJM	1.1	170.50	Review and analyze trial brief filed by M. Hodge and Source 2;
3/28/2013	MJM	3.0	465.00	Research and draft trial research memorandum regarding emails as admissions, as well as foundations for authenticity of emails;
3/28/2013	MJM	2.5	387.50	Research and draft trial research memorandum regarding Source 1 business records and emails as subject to business records exception;
3/28/2013	MJM	0.6	93.00	Review proposed stipulated trial exhibit list and correspond with opposing counsel regarding the same;
3/28/2013	MJM	0.4	62.00	Analyze issue of Source 2 non-disclosure agreement and how to address Source 2 documents at trial;
3/28/2013	MJM	1.4	217.00	Analyze approach for admissibility questions related to open and booked order reports;
3/28/2013	MJM	1.7	263.50	Analyze the necessity of additional witnesses in order to put on case in chief and ensure that evidence footnoted in the damages exhibits will be admitted or is admissible;

Date	Initials	Hours	Amount	Fee Description
3/29/2013	MJM	1.8	279.00	Research and draft trial research memorandum regarding evidentiary foundations and potential challenges to out of court statements made by J. Arp;
3/29/2013	MJM	3.0	465.00	Witness preparation;
3/29/2013	MJM	1.2	186.00	Research and draft trial research memorandum regarding evidentiary foundations and potential challenges to e-mails from J. Arp;
3/29/2013	MOR	7.7	1,732.50	Continue trial preparation and meet with D. Prehn and D. Bandak to rehearse direct testimony (5.5); meet with J. Welch, potential rebuttal witness, relating to M. Hodge's allegations regarding J. Welch and status of dissolution account (1.0); receive and review transcript of April 13, 2012 partnership meeting (.8); receive and review summary of D. Prehn's conversation with N. Stuart (.3); arrange for delivery of April 13, 2012 transcript to E. Guerricabeitia and J. Geier (.1);
3/29/2013	TMH	11.9	1,190.00	Correspond with R. Goldston regarding trial testimony (.1); review official transcript of partner meeting held on April 13, 2012 (.8); prepare correspondence to E. Guerricabeitia regarding same (.1); additional review and analysis of deposition transcripts (2.3); travel to/from Eagle and attend meeting with Mike Roe and J. Welch regarding trial testimony (1.8); trial strategy and preparation conferences with Mike Roe, Matt McGee, and D. Prehn (5.1); work on outline for D. Prehn's direct examination and preparation of associated exhibits (1.7);
3/30/2013	MOR	10.5	2,362.50	Meet with D. Prehn and D. Bandak to rehearse direct testimony and work on potential defenses to cross-examination (6.5); prepare for trial (4.0);
3/30/2013	MJM	6.0	930.00	Witness preparation and review of Prehn testimony;
3/30/2013	MJM	3.0	465.00	Research lost profits and future earnings and draft trial research memorandum regarding lost profits and testimony of a party about the value of property;

Date	Initials	Hours	Amount	Fee Description
3/30/2013	TMH	8.0	800.00	Trial strategy and preparation conferences with Mike Roe, Matt McGee, D. Prehn and D. Bandak (2.5); review discovery responses, correspondence, and pleadings relating to copying of Source 1's server, in preparation for potential objections at trial (2.1); review and analyze outline of D. Prehn's trial testimony (1.3); prepare set of exhibits for D. Prehn's direct examination for review by D. Prehn (1.2); prepare alternate damage summaries (Exhibits 164 and 167) removing BodyBuilding.com $223,000 purchase order from the equation (.9);
3/31/2013	MJM	2.0	310.00	Revise and finalize trial brief;
3/31/2013	MOR	12.0	2,700.00	Continue trial preparation (5.5); meet with clients to discuss and revise direct examination testimony and potential cross-examination testimony (2.5); review trial exhibits (1.0); draft and practice opening statement (2.0); meet with paralegal regarding logistics of trial exhibits and illustrative exhibits (.5); review and revise plaintiffs' trial memorandum and arrange for delivery to opposing counsel and filing with court on April 1 (.5);
3/31/2013	TMH	9.1	910.00	Trial strategy and preparation conferences with Mike Roe and Matt McGee (1.9); additional work on outline for D. Prehn's direct examination and opening statement (2.6); final trial preparation, including finalization of trial exhibits, research memoranda, pleadings, and related documents needed for trial (4.6);
4/1/2013	TMH	5.2	520.00	Prepare for and attend trial, including oral argument on various pending motions before the Court, as well as an additional, oral motion made by Source 2 and M. Hodge regarding damages summaries (4.4); correspond with Judge Owen's clerk regarding continuation of trial (.2); prepare correspondence to M. Baldner's counsel, R. Goldston, and J. Welch regarding continuation of trial (.3); conferences with Mike Roe and Matt McGee regarding defendants' oral motion to exclude damages summaries or continue the trial (.3);
4/1/2013	MOR	3.7	832.50	Complete preparation for trial (1.2); attend first morning of trial, wherein the court decided to continue the trial date (1.5); meet with client to discuss strategy (.5); follow up with court clerk regarding date of status conference (.5);
4/1/2013	MJM	-	-	NO CHARGE Debrief regarding continuance of trial (.4);

Date	Initials	Hours	Amount	Fee Description
4/1/2013	MJM	-	-	NO CHARGE Review authority regarding illustrative exhibits and summaries (.4);
4/10/2013	MOR	0.2	45.00	Phone call to C. Nicholson regarding activities with M. Baldner;
4/11/2013	MOR	0.1	22.50	Arrange for delivery of deposition transcripts to C. Nicholson;
4/11/2013	MJM	-	-	NO CHARGE Review and analyze pst file for any further communications related to M. Baldner or advice of counsel (1.0);
4/11/2013	TMH	0.2	20.00	Prepare correspondence to C. Nicholson regarding deposition transcripts (.1); conference with Matt McGee regarding emails between M. Baldner and M. Hodge (.1);
4/17/2013	MOR	0.1	22.50	Receive and review email and analysis from D. Prehn regarding M. Baldner;
4/18/2013	MOR	0.5	112.50	Prepare for conference call; conference call with D. Prehn and D. Bandak;
4/25/2013	MOR	0.2	45.00	Phone call to C. Nicholson regarding M. Baldner;
5/31/2013	MOR	0.9	202.50	Review notes and file (.1); prepare for conference call (.1); conference call with D. Prehn and D. Bandak regarding status of litigation (.7);
6/10/2013	MOR	1.9	427.50	Review notes and file (.2); prepare for status conference (.4); participate in telephonic status conference (.3); follow up on issues raised by Judge and opposing counsel during status conference (.3); phone call to D. Bandak (.2); receive and review Order Granting Stipulation for Voluntary Dismissal with Prejudice issued by court (.1); receive and review three additional orders from court regarding stipulations and affidavits from E. Guerricabeitia (.2); exchange emails with D. Prehn regarding results of status conference (.2);
6/10/2013	MJM	0.3	46.50	Conference concerning results of status conference and trial setting;
6/11/2013	MOR	0.5	112.50	Review notes and file; prepare for conference call (.2); conference call with D. Prehn and D. Bandak (.3);
6/17/2013	MOR	0.5	112.50	Receive and review correspondence from E. Guerricabeitia and additional expert witness disclosure, including expert witness report and expert resume;

Date	Initials	Hours	Amount	Fee Description
6/20/2013	MOR	0.2	45.00	Short phone call to D. Prehn regarding expert report;
6/24/2013	MOR	0.2	45.00	Receive and review Second Order Governing Proceedings and Setting Trial from district court;
6/25/2013	MOR	2.4	540.00	Review notes and file and prepare for conference call (.3); conference call with D. Prehn and D. Bandak (1.0); receive and review email/memorandum from D. Prehn regarding analysis of P. Butler expert report (.2); receive and review email from J. Geier with attached Amended Exhibit List (.3); receive and review second email from D. Prehn with more detailed analysis of P. Butler expert report (.6);
6/26/2013	MOR	1.1	247.50	Receive and review correspondence from E. Guerricabeitia enclosing Motion to File Amended Witness List and Exhibit List, Defendants' Motion to File an Amended Witness List and Exhibits List and Affidavit of Ed Guerricabeitia in Support of Defendants' Motion to File an Amended Witness List and Exhibits List (.8); review information related to P. Butler, expert named by defendants (.3);
6/26/2013	TMH	1.2	120.00	Review expert witness report of Peter Butler juxtaposed with plaintiffs' trial exhibits 164-167(.4); Source 2 and M. Hodge's motion to file an amended witness and exhibit list, together with supporting affidavit of Ed Guerricabeitia and exhibits (.3); research regarding valuation expert Peter Butler (.5);
6/26/2013	MJM	1.3	201.50	Review and analyze report filed by new expert retained by Hodge and analysis provided by D. Prehn regarding the same;
6/28/2013	MOR	0.3	67.50	Short phone call to D. Prehn regarding status of state court litigation (.2); receive and review Notice of Hearing from E. Guerricabeitia (.1);
7/9/2013	MJM	0.4	62.00	Review and analyze motion to file amended witness list in preparation to respond to the same;
7/10/2013	MJM	2.5	387.50	Outline and draft response in opposition to motion to file amended witness list and exhibit list;
7/15/2013	MJM	7.3	1,131.50	Draft, revise and finalize objection to motion to file amended witness list and exhibit list;

Date	Initials	Hours	Amount	Fee Description
7/16/2013	MOR	0.5	112.50	Assist in finalization of Plaintiff's Objection to Defendant's Motion to File an Amended Witness List and Exhibit List and arrange for filing with court;
7/16/2013	MJM	0.5	77.50	Finalize and file objection to defendants' motion to file an amended witness list and exhibit list;
7/17/2013	MJM	0.3	46.50	Receive and review motion to withdraw as counsel for Source 1 and affidavit in support thereof;
7/18/2013	MJM	0.3	46.50	Analysis of what J. Geier's suggestion in her affidavit concerning the common interests of Source 1 with Hodge and Source 2 means and how to use it;
7/18/2013	MOR	0.5	112.50	Receive and review Judy Geier's Motion for Withdraw of Counsel and supporting affidavit (.3); prepare email/memorandum to D. Prehn and D. Bandak regarding advice to videotape D. Prehn's direct examination testimony (.2);
7/19/2013	MOR	0.6	135.00	Receive and review Notice of Hearing regarding Judy Geier's Motion for Withdrawal (.1); receive and review Defendants' Response to Plaintiff's Objection to Defendants' Motion to File an Amended Witness List and Exhibit List; discuss same with associate counsel (.5);
7/22/2013	MOR	0.3	67.50	Review and arrange for delivery of trial outline to D. Bandak and D. Prehn for practice of direct examination sessions;
7/22/2013	TMH	0.7	70.00	Review and analyze defendants' response to plaintiffs' objection to new expert witness (.3); review discovery concerning defendants' claim to have disclosed all financial information as of October 9, 2012 (.4);
7/22/2013	MJM	0.8	124.00	Review and analyze reply in support of amending witness list and exhibit list in preparation for hearing;
7/23/2013	MJM	4.5	697.50	Prepare for and participate in hearing on motion to amend witness list and exhibit list;
7/23/2013	TMH	0.3	30.00	Conference with Matt McGee regarding factual issues concerning production of records by defendants up to and including at the time of deposition, in preparation for hearing on defendants' motion for additional witness;
7/23/2013	MOR	0.3	67.50	Conference with associate attorney regarding preparation for hearing on plaintiff's objection to amended witness and exhibit list;

Date	Initials	Hours	Amount	Fee Description
7/29/2013	MOR	0.3	67.50	Receive and review Defendant Michael L. Hodge, II and The Source LLC's Amended Witness List;
7/29/2013	MJM	0.5	77.50	Draft status update to the client related to outcome of hearing and strategy moving forward;
8/6/2013	MOR	0.3	67.50	Conference with associate attorney regarding August 6 hearing;
8/7/2013	MOR	0.7	157.50	Conference with associate attorney (.2); prepare for conference call; conference call with D. Prehn, D. Bandak and Matt McGee (.5);
8/7/2013	MJM	0.5	77.50	Prepare for and participate in conference with Mike Roe, D. Prehn and D. Bandak;
8/13/2013	MOR	0.3	67.50	Review notes (.1); prepare for call (.1); short phone call to D. Prehn (.1);
8/14/2013	MOR	0.3	67.50	Receive and review Order for Withdrawal of Attorney of Record from court (.1); receive and review email from D. Prehn with observations about M. Brown (.2);
8/19/2013	TMH	0.4	40.00	Correspond with D. Prehn regarding trial exhibits (.2); preparation of exhibits for review by D. Prehn (.2);
8/23/2013	TMH	0.4	40.00	Review plaintiffs' discovery requests to Source 2 and M. Hodge concerning production of expert witness files (.1); prepare correspondence to E. Guerricabeitia regarding supplementing discovery responses (.3);
8/23/2013	MOR	0.5	112.50	Finalize and arrange for delivery and service of P. Butler deposition notice;
8/27/2013	MOR	0.1	22.50	Receive and review Notice of Appearance from E. Guerricabeitia for The Source Store, LLC;
8/28/2013	MOR	0.5	112.50	Receive and begin review of test video;
9/2/2013	MOR	0.3	67.50	Conference with paralegal regarding client testimony video;
9/10/2013	MOR	1.5	337.50	Review notes and file and prepare for call (.2); conference call with D. Prehn and D. Bandak regarding video testimony (.5); receive and review correspondence from E. Guerricabeitia (.2); receive and review additional expert disclosure documents related to P. Butler (.5); arrange for delivery to clients (.1);
9/11/2013	MOR	1.6	360.00	Complete sample script for direct examination and forward to D. Bandak and D. Prehn for review and comment;

Date	Initials	Hours	Amount	Fee Description
9/16/2013	MOR	0.3	67.50	Arrange for delivery of missing exhibits to D. Prehn;
9/19/2013	MOR	1.6	360.00	Review P. Butler disclosure and expert opinion information (.8); phone call to D. Prehn regarding P. Butler's expert opinion and possible points of rebuttal (.3); receive and review email from D. Prehn with attached comments to P. Butler opinion and disclosure information (.4); prepare email to D. Prehn and D. Bandak including additional P. Butler disclosure material (.1);
9/20/2013	MOR	1.1	247.50	Review notes and file and prepare for conference call (.2); participate in conference call with D. Prehn and D. Bandak regarding P. Butler deposition and clients' agreement that the same should be vacated (.7); review and arrange for delivery of Notice to Vacate Deposition (.2);
9/20/2013	MJM	0.7	108.50	Analyze binder of expert information received from the Source and analyze approach regarding attempting to limit the scope of The Source's expert's testimony;
9/20/2013	MJM	0.6	93.00	Research Idaho law regarding responsibility for costs associated with expert depositions;
9/23/2013	MOR	0.2	45.00	Receive and review email from D. Prehn regarding comments and observations with respect to April 13, 2012 recording with M. Baldner;
9/24/2013	MOR	0.2	45.00	Complete review of April 13, 2012 recording issues (.1); prepare short email response to D. Prehn (.1);
9/30/2013	MOR	1.3	292.50	Work on factual development and preliminary trial preparation (1.0); exchange emails with D. Prehn and D. Bandak regarding trial preparation (.3);
10/1/2013	MOR	0.3	67.50	Phone call to D. Prehn regarding videotaping and case outline;
10/17/2013	MOR	1.3	292.50	Review notes and file and prepare for call (.3); conference call with D. Prehn and D. Bandak regarding litigation strategy and factual development (1.0);
10/21/2013	MOR	2.3	517.50	Receive and review client's "blueprinting" documents (.3); begin review and revisions (1.5); receive and review additional email from D. Prehn with additional "blueprinting" (.5);
10/28/2013	MOR	8.5	1,912.50	Work on trial outline (6.5); phone call to D. Prehn (.5); review underlying pleadings (.5); review portion of exhibits (1.0);

Date	Initials	Hours	Amount	Fee Description
10/29/2013	MOR	6.4	1,440.00	Continue work on factual development (2.5); trial preparation (2.0); review evidentiary issues related to admission of business records (1.5); review Exhibit bb dropped from Source 1's original amended exhibit list (.4);
10/30/2013	MOR	6.7	1,507.50	Continue work on trial preparation (3.2); conference with paralegal regarding exhibits (.8); conference with associate attorney regarding legal issues (.7); revise portions of draft outline (2.0);
10/31/2013	MOR	2.2	495.00	Finalize outline and forward to clients for further review and comment;
11/4/2013	MOR	3.5	787.50	Prepare for conference call (.3); conference call with D. Prehn and D. Bandak regarding trial strategy (1.5); review portions of exhibits (1.0); review multiple emails from D. Prehn and D. Bandak regarding direct examination testimony (.7);
11/4/2013	TMH	0.3	30.00	Conference with Mike Roe regarding trial issues, including defendants' trial exhibits;
11/5/2013	MOR	3.1	697.50	Continue work on trial preparation (.6); receive and review email from D. Prehn regarding various exhibits (.3); review portions of Exhibit 162 (.4); review other open orders reports (.8); research issues related to evidentiary foundations for social media evidence (1.0);
11/6/2013	MOR	1.3	292.50	Receive and review email from E. Guerricabeitia enclosing Amended Exhibit List (.2); review Amended Exhibit List (.4); compare to list filed by J. Geier for Source 1 and prior lists from Source 2 and M. Hodge from March 2013 (.7);
11/11/2013	MOR	5.8	1,305.00	Review notes and file and prepare for call (.3); conference call with D. Prehn and D. Bandak (2.0); discuss direct examination testimony with D. Prehn (.3); work on supporting exhibits and draft direct examination script (2.5); second phone call to D. Prehn regarding direct examination (.3); third phone call to D. Prehn regarding direct examination (.4);
11/11/2013	MJM	0.5	77.50	Discuss and evaluate claims for damages and evidentiary approach regarding the same;

Date	Initials	Hours	Amount	Fee Description
11/11/2013	TMH	4.4	440.00	Review and analyze Source 1's updated exhibit list and trial exhibits (.8); review and analyze Source 2 and M. Hodge's updated exhibit list and trial exhibits (.4); strategy conference with Mike Roe and Matt McGee regarding pre-trial issues, including pre-trial conference, trial exhibits, plaintiff's theme for trial, and defendants' theme (2.8); prepare correspondence to plaintiff's counsel regarding exhibits 1072-1074 (.1); telephone conference with J. Welch regarding trial testimony (.1); correspond with R. Goldston, computer forensic specialist, concerning trial (.2);
11/12/2013	TMH	0.8	80.00	Prepare second amended exhibit list for trial (.4); prepare new exhibit 168 (.2); conference with Mike Roe regarding trial issues (.2);
11/12/2013	MOR	6.2	1,395.00	Review pleadings (2.0); prepare for pretrial (.5); attend pretrial conference with opposing parties and Judge Owen (.7); prepare for meeting (.2); meet with D. Prehn (1.2); prepare Amended Exhibit List (.5); follow up phone call to D. Prehn (.4); receive and review email and attached narrative from D. Prehn regarding damage theory (.3); conference with paralegal regarding follow up with E. Guerricabeitia regarding missing item 5 from P. Butler's source list (.4);
11/13/2013	MOR	1.5	337.50	Receive and review email and attached data and graphs from D. Prehn related to rebuttal to P. Butler's anticipated testimony (1.0); exchange emails with D. Prehn and D. Bandak regarding P. Butler expert opinion and potential avenues of attack (.5);
11/14/2013	MOR	3.7	832.50	Review notes and file and prepare for conference call (.2); conference call with D. Prehn and D. Bandak regarding trial preparation (1.5); receive and review email from E. Guerricabeitia with attached P. Butler supporting data (2.0);
11/14/2013	TMH	0.2	20.00	Correspond with defendant's counsel regarding items reviewed by expert, P. Butler, in preparation of his expert report;
11/18/2013	MOR	0.5	112.50	Receive and review email and attached draft settlement letter to D. Bandak (.2); exchange emails with D. Prehn and D. Bandak regarding possible settlement and strategies (.3);
11/19/2013	MOR	0.6	135.00	Exchange emails with E. Guerricabeitia regarding possible stipulation to exhibits (.3); exchange emails with D. Prehn regarding possible settlement and trial strategy (.3);

Date	Initials	Hours	Amount	Fee Description
11/20/2013	MOR	4.6	1,035.00	Identify and analyze additional exhibits to support direct examination (1.2); begin work on cross-examination outlines (1.2); review research related to evidentiary foundations (.5); receive and review email from E. Guerricabeitia setting forth exhibits defendants would be willing to stipulate to (.3); analyze exhibits and cross-check against prior exhibit lists disclosed in March 2013 (.3); receive and review email from D. Prehn regarding video practice for direct examination (.2); exchange emails with D. Bandak regarding settlement letter (.2); work on amended trial subpoenas from J. Welch and M. Brown (.4); analyze issues related to M. Baldner and potential use as rebuttal witness (.3);
11/21/2013	MOR	8.8	1,980.00	Conference with paralegal regarding exhibits (.2); study exhibits (3.0); work on revisions to direct testimony script (.5); work on outlines for cross-examination (2.0); review depositions of Source 1, Source 2, M. Hodge and M. Brown (2.0); phone call to E. Guerricabeitia stipulation to exhibits (.2); continue negotiation of stipulation with E. Guerricabeitia (.3); receive and review email from D. Prehn related to misnumbered deposition exhibit (.2); review Hodge LLC real estate purchase and sale agreement (.4);
11/21/2013	TMH	0.5	50.00	Conference with Mike Roe regarding trial issues (.3); review trial exhibits concerning use of transcript of the partner meetings (.2);
11/22/2013	MOR	5.3	1,192.50	Complete review remainder of deposition transcripts (1.5); review M. Baldner information and pleadings related to Motion to Quash (1.0); review foundational requirements for introduction of social media evidence (.8); work on supporting information for damage calculations (1.8); revise D. Prehn's direct examination script and forward to D. Bandak and D. Prehn for further review and comment (1.2);
11/23/2013	MOR	8.7	1,957.50	Multiple phone calls to clients regarding trial preparation (1.4); continue work on direct and cross-examinations (2.5); continue research on support for damage model (1.0); exchange emails with D. Prehn regarding direct examination script (.5); make further revisions to script (.6); research issues related to admission of E. Guerricabeitia's letters due to his refusal to stipulate (1.8); draft and revise D. Bandak direct examination script (.9);

Date	Initials	Hours	Amount	Fee Description
11/24/2013	MOR	6.6	1,485.00	Phone calls to D. Prehn (1.6); phone calls to D. Bandak (.7); conference with paralegal regarding exhibits and copies for court (.4); conference with associate attorney regarding expert witness testimony (.4); review portions of P. Butler report and supporting data (1.1); review J. Young material (1.6); revise D. Bandak direct examination script (.4); revise D. Prehn direct examination script (.3);
11/25/2013	MOR	3.9	877.50	Review notes and file and prepare for meeting (.5); meet with J. Welch regarding trial testimony (1.0); phone call to E. Guerricabeitia regarding upcoming trial (.2); review and follow up on trial subpoena to M. Baldner (.3); conference with paralegal regarding preparation of communication to E. Guerricabeitia regarding stipulation to certain exhibits (.2); follow up on use of T. Goldston at trial (.4); research Idaho Rule of Evidence 611(c) regarding use of leading questions with hostile witness (1.0); review J. Welch emails to and from M. Hodge (.3);
11/25/2013	TMH	8.7	870.00	Strategy conference with Mike Roe in preparation for trial (3.8); review and analyze parties' trial exhibits (1.4); prepare correspondence to E. Guerricabeitia regarding reconsideration of stipulation to the parties trial exhibits (.8); correspond with process server regarding subpoenas to M. Baldner and M. Brown (.4); conference with Mike Roe and J. Welch in preparation for trial (2.0); correspond with R. Goldston regarding testimony at trial (.3);
11/26/2013	TMH	10.3	1,030.00	Strategy conferences with Mike Roe in preparation for trial (2.6); continue review and analyze parties' trial exhibits (2.0); correspond with E. Guerricabeitia regarding stipulation to the parties trial exhibits (.9); analyze E. Guerricabeitia's decision to stipulate to certain exhibits as opposed to others (2.3); correspond with process server regarding subpoena to M. Baldner (.2); correspond with J. Welch in preparation for trial (.3); review and revise outlines for direct testimony of D. Prehn, D. Bandak, and J. Welch (1.2); research regarding M. Hodge's criminal history (.8);

Date	Initials	Hours	Amount	Fee Description
11/26/2013	MOR	10.4	2,340.00	Review exhibits related to prepaid plastics and mold deposit claims (1.5); review exhibits and other factual information underlying plaintiffs' exhibits 164, 165, 166, and 167 (1.0); work on cross-examination questions (.8); review portion of Source 1 deposition transcript (.3); review M. Hodge criminal information (.4); exchange emails with D. Prehn regarding video practice of direct examination (.2); review information take from Source 1 hard drive and PST files (1.0); receive and review email from E. Guerricabeitia regarding additional exhibits to which defendants will stipulate (.4); assist paralegal in preparation of response to E. Guerricabeitia, specifically with respect to Exhibits 38, 124, and 146 (.4); arrange for delivery of such exhibits to E. Guerricabeitia (.2); receive and review second email from E. Guerricabeitia regarding Exhibit 1049 (.2); receive and review email from D. Prehn regarding communications with E. Butkevich and Technology Plastics (.3); receive and review additional email communications to and from E. Guerricabeitia regarding exhibits and admission at trial (.2); work on stipulation for trial exhibits (.3); draft J. Welch direct examination script (.8); receive and review email from D. Prehn with spreadsheet related to loan and back salary (.6); exchange further emails with D. Prehn regarding loan and back salary (.4); research Idaho Rule of Evidence 801(d) and Rule 903 related to admission of E. Guerricabeitia letters (.7); make further revisions to D. Prehn and D. Bandak direct examination scripts and forward to clients for further review and comment (.6); prepare email to J. Welch regarding trial testimony (.2);
11/26/2013	MJM	0.6	93.00	Develop strategy concerning potential motion for directed verdict;
11/27/2013	TMH	11.5	1,150.00	Series of strategy conferences with Mike Roe and Matt McGee in preparation for trial (4.6); prepare stipulation to certain of the parties' trial exhibits, including comprehensive list of stipulated exhibits (2.3); correspond with E. Guerricabeitia regarding same (.4); correspond with Judge Owen's clerk regarding stipulation to trial exhibits (.3); review parties' trial exhibits and identify those to use during cross-examination of M. Hodge and direct examination of M. Brown (3.4); review and analyze briefing regarding motion to quash subpoena to M. Baldner, in light of re-issued notice of hearing regarding same (.5);

Date	Initials	Hours	Amount	Fee Description
11/27/2013	MOR	6.8	1,530.00	Meet with paralegal and associate attorney regarding allocation of tasks (.3); highlight prepared tabbed versions of deposition transcripts (1.0); exchange emails with C. Nicholson, attorney for M. Baldner, regarding M. Baldner trial testimony (.3); conduct further research on admission of Source 2 financial statements and proper evidentiary foundation (1.3); receive and review email from D. Prehn with revised direct examination script (.4); finalize stipulation and forward to E. Guerricabeitia (.3); review Motion to Quash Trial Subpoena to Michael Baldner, Memorandum in Support of Motion to Quash Trial Subpoena and Affidavit of Michael Baldner in Support of Motion to Quash Trial Subpoena (.5); revise stipulation as to exhibits and arrange for delivery to E. Guerricabeitia (.3); research issues related to attorney/client privilege and waiver thereof in litigation involving derivative claims (.5); phone call to C. Nicholson regarding M. Baldner (.3); receive and review renewed Notice of Hearing regarding M. Baldner's renewed Motion to Quash (.1); make additional revisions to bad acts section of D. Prehn direct examination script (1.5);
11/28/2013	MOR	3.7	832.50	Multiple phone calls to D. Prehn regarding direct examination and potential cross (1.0); work with witness regarding cross-examination (.8); review Idaho Rules of Evidence relating to business records exception to hearsay and admission of party opponent and party opponent agent as exceptions or non-hearsay (.5); review Idaho Case law regarding hearsay exceptions (1.6); receive and review emails from D. Prehn relating to trial preparation and Universal Nutrition order (.3); receive and review email from D. Prehn with attached revised and redlined changes to D. Prehn script (.5);
11/28/2013	TMH	3.6	360.00	Prepare working set of trial exhibits for direction examination of M. Brown, following the testimony outline and citing to deposition testimony and exhibits, together with highlighting and tabbing relevant sections of the trial exhibits for ease of reference at trial (2.4); review and revise outline for direction examination of M. Brown (1.2);

Date	Initials	Hours	Amount	Fee Description
11/29/2013	TMH	6.8	680.00	Revise and finalize outline for direction examination of M. Brown (.4); finalize working set of trial exhibits for direction examination of M. Brown (.6); prepare working set of trial exhibits for cross-examination of M. Hodge, identifying corresponding deposition testimony and exhibits, together with highlighting and tabbing relevant sections of trial exhibits for ease of reference at trial (2.3); prepare working set of trial exhibits for direct examination of D. Prehn, following comprehensive testimony outline, together with highlighting and tabbing relevant sections of trial exhibits for ease of reference at trial (2.3); conferences with Mike Roe regarding witness testimony, trial exhibits, potential objections, and other trial issues (1.2)
11/29/2013	MJM	6.3	976.50	Research Idaho law and draft opposition to motion for directed verdict (2.3); draft pocket bench brief concerning lost profits (1.0); review and analyze the opinion of P. Butler, as well as the information of J. Young, in order to develop potential cross-examination script (2.6); discuss strategy concerning calling M. Brown as a witness (0.4);
11/29/2013	MOR	6.8	1,530.00	Meet with D. Prehn (1.5); review and organize all exhibits in order of trial presentation (2.6); review Exhibit 1016 and constituent pages (.8); work out sequence for D. Prehn testimony (.4); exchange emails with D. Bandak regarding D. Bandak factual knowledge (.3); review Idaho Rule of Evidence 602 and case law interpreting the same (.9); receive and review email from D. Bandak with additional revisions to script (.3);
11/30/2013	MOR	11.2	2,520.00	Work on cross-examination for J. Young (2.0); work on M. Brown cross-examination/direct examination script and supporting affidavits (3.0); work on opening statement (.8); review trial brief and memoranda supporting motions that were heard on April 1, 2013 (1.2); meet with D. Bandak and D. Prehn (4.2);
11/30/2013	MJM	6.8	1,054.00	Develop cross-examination script for expert P. Butler (3.9); review Butler opinion with D. Prehn and D. Bandak regarding double-counting issue (2.0); begin reviewing J. Young exhibits to address cross-examination script (0.9);

Date	Initials	Hours	Amount	Fee Description
11/30/2013	TMH	10.0	1,000.00	Continue preparation of working set of trial exhibits for direct examination of D. Prehn, following comprehensive testimony outline, together with highlighting and tabbing relevant sections of trial exhibits for ease of reference at trial (4.3); conferences with Mike Roe regarding witness testimony, trial exhibits, potential objections, and other trial issues (1.8); continue preparation of working set of trial exhibits for cross-examination of M. Hodge, identifying corresponding deposition testimony and exhibits, together with highlighting and tabbing relevant sections of trial exhibits for ease of reference at trial (3.9);
12/1/2013	MJM	6.0	930.00	Meet with D. Prehn and D. Bandak regarding J. Young exhibits in order to prepare cross-examination script (1.7); draft J. Young cross-examination script (3.5); analyze issues related to order of witnesses, and whether to call M. Brown in case in chief (0.8);
12/1/2013	TMH	10.0	1,000.00	Series of strategy conferences with Mike Roe, Matt McGee, and/or D. Prehn and D. Bandak regarding trial issues (1.3); preparation of materials in preparation for anticipated objections by defendants' counsel to evidence taken from Source 1's production (PST files and Source 2 records) (1.8); revise and finalize pocket briefs concerning Facebook evidence, exhibit summaries, privilege (Baldner), and lost profits (2.1); revise and finalize opening statement (1.9); revise and finalize final trial preparation, including finalization of trial exhibits, research memoranda, pleadings, and related documents needed for trial (2.9);
12/1/2013	MOR	11.7	2,632.50	Continue trial preparation; meet with D. Prehn and D. Bandak (4.5); meet with Matt McGee and Tiffiny Hudak regarding exhibits (1.1); review exhibits and prior pleadings (1.7); review deposition transcripts (1.2); draft and practice opening statement (.8); revise Hodge cross-examination (.8); work on J. Young cross-examination script (.5); review Rule 904 regarding authentication and Facebook photos (.8); review Rule 404 character information (.3);

Date	Initials	Hours	Amount	Fee Description
12/2/2013	MOR	12.8	2,880.00	Trial (5.0); follow up on factual and legal issues raised by first day of trial (1.5); meet with D. Prehn and D. Bandak (2.0); conference with Matt McGee and Tiffiny Hudak regarding preparation for second day of trial (1.0); discuss M. Baldner testimony with C. Nicholson (.3); review prior pleadings related to M. Baldner evidence (.7); receive and review email with attached Exhibit 1045 from D. Prehn (.2); discuss same with D. Prehn; receive second email from D. Prehn regarding Exhibit 94 and Exhibit 1068 (.4); discuss exhibits with D. Prehn and D. Bandak (.5); receive and review spreadsheet related to possible areas of cross-examination of D. Prehn (.5); review fourth email and attachment from D. Prehn related to calculation of shaker cup sale profits (.3);
12/2/2013	TMH	11.0	1,100.00	Travel to/from Ada County Courthouse for trial (.5); attend Day 1 of trial (6.0); correspond with Judge Owen's clerk regarding trial schedule (3); series of strategy conference with Mike Roe, Matt McGee, D. Prehn, and D. Bandak in preparation for trial Day 2 (1.8); work on outline and exhibits for D. Prehn's direct and potential cross examination (1.1); preparation of records and exhibits for next day of trial (1.3);
12/2/2013	MJM	0.7	108.50	Research evidentiary rules related to criminal convictions(0.2); research e-mails related to discussion of Source 1 lease (0.2); discuss status of trial (0.3);
12/3/2013	MJM	5.0	775.00	Evaluate whether the plaintiffs have established liability for the damages in light of comments by Court in response to defendants' objection to admission of the damages exhibits (1.8); review and analyze J. Young exhibits (0.8); evaluate exhibit concerning net profitability of Source 1 (0.8); meeting with D. Bandak and D. Prehn concerning cross-examination of various witnesses (1.6);
12/3/2013	TMH	10.5	1,050.00	Travel to/from Ada County Courthouse for trial (.5); attend Day 2 of trial (6.0); prepare list of admitted exhibits in Trial Day 1 and correspond with E. Guerricabeitia regarding same (1.3); series of strategy conference with Mike Roe, Matt McGee, D. Prehn, and D. Bandak in preparation for trial Day 3 (1.6); conference with Mike Roe and J. Welch in preparation for direct testimony (.3); preparation of records and exhibits for next day of trial (.8);

Date	Initials	Hours	Amount	Fee Description
12/3/2013	MOR	11.5	2,587.50	Second day of trial (5.0); follow up on legal and factual issues raised during second day of trial (1.0); meet with D. Prehn and D. Bandak (3.0); conference with Tiffiny Hudak and Matt McGee regarding December 3 developments in preparation for third day of trial (.5); prepare and arrange for delivery of Amended Trial Subpoena to J. Welch (.3); review and arrange for delivery of list of admitted trial exhibits to E. Guerricabeitia (.4); research issues related to inadequate expert disclosure and potential issues anticipated with P. Butler testimony (.8); review in particular Morris v. Franzen, 101 Idaho 778 (.5);
12/4/2013	MOR	9.8	2,205.00	Prepare for third day of trial; conference with associate attorney regarding research (.8); work on possible response/defense to Rule 41 motion (1.2); review factual and legal issues related to M. Hodge's salary as liquidator (.5); review related Operating Agreement and Idaho statute provisions (1.0); review Hodge salary issue relationship to damage model (.3); review deposition testimony related to truck loan and M. Hodge's loan (.6); receive email and attachments from D. Prehn regarding possible avenues of re-direct examination (.4); review intellectual property issues (.5); work on P. Butler cross-examination script with Matt McGee (.8); receive and review multiple e-mails from D. Prehn relating to re-direct examination and cross-examination of M. Hodge (1.0); review M. Hodge deposition testimony concerning $49,680 transfer of funds (.5); receive and review email from D. Prehn with comments to draft P. Butler cross-examination script (.2); review Exhibit 1013 relative to J. Young testimony (.3); review Idaho Code Section 30-6-409(2) regarding duty of loyalty (.3); prepare multiple e-mails to D. Prehn regarding re-direct examination (.4); phone call to D. Bandak regarding preparation for direct testimony (.5); work on revisions to D. Bandak direct examination script (.5);

Date	Initials	Hours	Amount	Fee Description
12/4/2013	TMH	15.0	1,500.00	Continue preparation of working set of trial exhibits for cross-examination of M. Hodge, identifying corresponding deposition testimony and exhibits, together with highlighting and tabbing relevant sections of trial exhibits for ease of reference at trial (5.9); series of strategy conference with Mike Roe, Matt McGee, and/or D. Prehn, and D. Bandak in preparation for trial Day 3 (3.6); additional preparation of materials in anticipation of objections by defendants' counsel to evidence taken from Source 1's production (PST files and Source 2 records) (.8); additional work on outline for cross-examination of M. Brown and trial exhibits for cross-examination of M. Brown, in light of evidence taken at trial and decision to not call M. Brown in plaintiffs' case in chief (1.2); review of file to develop additional evidence to impeach defense witnesses (.8); work on cross examination outline for J. Young (.9); preparation of records and exhibits for next day of trial (1.8);
12/4/2013	MJM	10.4	1,612.00	Research and analyze whether elements of causes of action have been established in light of evidence and testimony admitted, as well as standards governing a directed verdict or dismissal of the claims if Source 2 and Hodge move for such dismissal (1.9); research and analyze best arguments in opposition to possible efforts by the defendants to increase the scope of P. Butler's expert testimony beyond the expert testimony disclosed in the expert disclosure (2.1); revise and finalize J. Young cross examination script (2.2); draft and revise cross script for defendants' expert P. Butler (3.2); go over J. Young cross script with Mike Roe (1.0);
12/5/2013	MJM	11.8	1,829.00	Review discovery responses to locate documents concerning D. Prehn's loan and calculations regarding the same from S. Cook and/or Hodge (0.6); put together cross-examination packages for J. Young and P. Butler (3.0); draft bench memorandum regarding limiting the scope of expert testimony to disclosed opinions (1.5); prepare for cross-examination of P. Butler (5.6); review strategy in light of remaining time for trial (1.1);

Date	Initials	Hours	Amount	Fee Description
12/5/2013	TMH	14.9	1,490.00	Travel to/from Ada County Courthouse for trial (.5); attend Day 3 of trial (8.5); series of strategy conference with Mike Roe, Matt McGee, D. Prehn, and D. Bandak in preparation for trial Day 4 (2.7); work on cross examination outlines for J. Young, M. Brown, and M. Hodge, including trial exhibits (1.8); preparation of records and exhibits for next day of trial (1.1);
12/5/2013	MOR	9.9	2,227.50	Third day of trial (8.0); receive and review email from C. Nicholson regarding M. Baldner testimony (.2); prepare short email to C. Nicholson regarding M. Baldner testimony (.2); prepare for fourth day of trial (1.5);
12/6/2013	MOR	8.0	1,800.00	Fourth day of trial (8.0);
12/6/2013	TMH	9.9	990.00	Travel to/from Ada County Courthouse for trial (.5); attend Day 4 of trial (8.5); strategy conference with Mike Roe, Matt McGee, D. Prehn, and D. Bandak (.9);
12/6/2013	MJM	5.5	852.50	Attend trial and complete cross-examination of expert P. Butler;
12/10/2013	TMH	1.2	120.00	Preparation of materials for use in drafting written closing argument;
12/10/2013	MOR	0.3	67.50	Receive and review email from A. Hunt, court clerk, regarding stipulation and admission of exhibits (.1); conference with paralegal regarding same (.2);
12/11/2013	MOR	0.4	90.00	Work with paralegal to finalize stipulated/admitted exhibit list (.3); receive and review email from E. Guerricabeitia regarding stipulated/admitted trial exhibits (.1);
12/11/2013	TMH	5.3	530.00	Review and analyze the Court's list of admitted exhibits juxtaposed with trial notes, for purposes of identifying any missing exhibits (2.2); correspond with Judge Owen's clerk and defendants' counsel regarding same (.3); conference with Mike Roe regarding missing exhibits from the Court's list of admitted exhibits (.4); review and analyze PST files of M. Hodge and M. Brown for additional evidence of M. Baldner's malfeasance (2.2);
12/12/2013	TMH	0.8	80.00	Continue preparation of materials for use in drafting written closing argument;
12/16/2013	MJM	0.3	46.50	Discuss approach related to closing, and significant issues to address therein;

Date	Initials	Hours	Amount	Fee Description
12/16/2013	MOR	1.6	360.00	Receive and review email from D. Prehn and attached damage spreadsheet (.3); conference with associate attorney (.2); work on closing arguments (.5); receive and review email from A. Hunt to Tiffiny Hudak regarding trial exhibits (.1); review portions of trial exhibits and cross-check to list proposed to court (.2); receive and review email from D. Bandak with comments regarding closing arguments (.2); receive and review second email from A. Hunt regarding additions and corrections to exhibit list and description of Exhibit 172 (.1);
12/16/2013	TMH	0.8	80.00	Review and analyze the Court's corrected list of admitted exhibits juxtaposed with trial notes, for purposes of identifying any missing exhibits (.6); correspond with Judge Owen's clerk and defendants' counsel regarding same (.2);
12/18/2013	TMH	0.5	50.00	Conference with Mike Roe regarding preparation of written closing arguments (.2); review notes from trial concerning evidence regarding Hodge's bad act, pre-paid plastics, and second mold deposit (.3);
12/18/2013	MJM	0.7	108.50	Review and analyze outline prepare for closing argument in preparation to draft closing argument;
12/19/2013	TMH	0.9	90.00	Review outline of proposed written closings (.5); series of conference with Matt McGee regarding facts and exhibits admitted as evidence at trial, for purposes of preparing written closing arguments (.4);
12/19/2013	MJM	3.7	573.50	Review proposed outline for closing argument, materials in support of closing argument and draft closing argument;
12/20/2013	MJM	6.2	961.00	Draft closing argument;
12/20/2013	TMH	0.8	80.00	Series of conference with Matt McGee regarding facts and exhibits admitted as evidence at trial, for purposes of preparing written closing arguments;
12/20/2013	MOR	0.8	180.00	Continue work on closing arguments (.5); conference with associate attorney regarding closing arguments (.2); prepare short email updating clients as to status of closing arguments (.1);
12/21/2013	MJM	9.1	1,410.50	Draft closing argument;
12/22/2013	MJM	1.5	232.50	Review and make suggested revisions to closing argument;

Date	Initials	Hours	Amount	Fee Description
12/22/2013	MOR	5.4	1,215.00	Review and revise draft closing arguments (2.5); review cited exhibits (1.5); review multiple e-mails and attachments from D. Prehn related to closing arguments (.8); receive and review spreadsheet from D. Prehn with Prehn loan and back salary calculations (.3); conference with paralegal regarding cross-reference to exhibits in closing arguments (.3);
12/22/2013	TMH	2.1	210.00	Review and revise closing arguments (1.3); review admitted exhibits (.5); prepare correspondence to Mike Roe and Matt McGee regarding additional exhibits to cite in closing arguments (.3);
12/23/2013	MOR	2.2	495.00	Finalize closing arguments and arrange for filing with district court (1.5); receive and review defendants' closing arguments (.6); receive and review email from D. Bandak regarding closing argument (.1);
12/23/2013	MJM	6.4	992.00	Revise and finalize closing argument;
12/27/2013	MJM	1.6	248.00	Review and analyze Hodge and Source 2's closing argument;
12/30/2013	MJM	4.3	666.50	Receive and review comments provided by Prehn and Bandak to the closing argument provided by Hodge and Source 2 (1.1); search for and research exhibits to rebut arguments offered by Hodge and Source 2 (2.0); outline responsive closing (1.2);
12/30/2013	MOR	0.3	67.50	Receive and review email and attachment from D. Prehn regarding comments to defendants' closing arguments (.1); receive and review second email from D. Prehn with additional comments to defendants' brief (.2);
12/31/2013	MJM	3.3	511.50	Draft response to Hodge and Source 2's closing argument;
1/1/2014	MJM	5.1	790.50	Draft response to Source 2's closing argument;
1/2/2014	MJM	7.2	1,116.00	Evaluate testimony and evidence referenced in Source 2's closing argument; draft and revise closing argument;
1/2/2014	MOR	1.0	225.00	Begin review and revising closing reply;
1/3/2014	MOR	2.4	540.00	Finalize response/reply and arrange for filing with court (1.5); receive and review email and attachments from D. Prehn regarding closing arguments (.4); receive and review defendant's rebuttal to closing argument (.5);

Date	Initials	Hours	Amount	Fee Description
1/3/2014	MJM	3.3	511.50	Revise and finalize response to Source 2's closing argument;
2/4/2014	TMH	0.3	30.00	Correspond with Judge Owen's chambers regarding trial exhibits not offered or admitted;
		1,532.6	253,558.00	SUBTOTAL
	less courtesy discounts		(3,543.68)	
			250,014.32	**GRAND TOTAL**

Summary of Fees

Initials	Hours	Rate	Amount
MOR	624.8	225	140,580.00
MJM	403.6	155	62,558.00
TMH	504.2	100	50,420.00
MJM	courtesy discount		(668.06)
MOR	courtesy discount		(2,606.62)
TMH	courtesy discount		(269.00)
TOTAL	1,532.6		250,014.32

24853.0000 - Donnelly Prehn and Dwight Bandak v. The Court Store, LLC, et al.
Ada County Case No. CV OC 2012-07728 -- Costs

Date	Amount	Cost Description
4/27/2012	88.00	VENDOR: Ada County Clerk - filing fee for complaint
4/27/2012	90.40	VENDOR: Tri-County Process Serving - service of summons and amended complaint upon G. Brown
4/30/2012	221.20	VENDOR: Tri-County Process Serving - service of summons and first amended complaint upon C. Claiborne
5/1/2012	95.00	VENDOR: Tri-County Process Serving - service of summons and first amended complaint upon M. Hodge
5/1/2012	36.00	VENDOR: Tri-County Process Serving - service of summons and first amended complaint upon The Source Store, LLC
5/1/2012	36.00	VENDOR: Tri-County Process Serving - service of summons and first amended complaint upon The Source, LLC
10/19/2012	850.00	VENDOR: G2 Research, Inc. - expert fees for computer forensic services
11/20/2012	85.00	VENDOR: Tri-County Process Serving - service of subpoena duces tecum upon Syringa Bank
11/20/2012	85.00	VENDOR: Tri-County Process Serving - service of deposition subpoena upon C. Halsted
11/21/2012	94.00	VENDOR: Tri-County Process Serving - service of deposition subpoena upon C. Halsted
12/2/2012	545.00	VENDOR: Tri-County Process Serving - service of North Carolina subpoena upon J. Arp
12/17/2012	200.00	VENDOR: Clerk of the Superior Court - subpoena fee for deposition of J. Arp
12/18/2012	94.00	VENDOR: Tri-County Process Serving - service of amended deposition subpoena upon C. Halsted
12/18/2012	90.40	VENDOR: Tri-County Process Serving - service of amended subpoena upon Bodybuilding.com
12/19/2012	122.00	VENDOR: Tri-County Process Serving - service of deposition subpoena upon J. Welch
1/9/2013	670.64	VENDOR: DTI - document production scanning

Date	Amount	Cost Description
2/8/2013	240.00	VENDOR: Brassey, Crawford & Howell, PLLC - mediation fee
3/14/2013	2,753.80	VENDOR: QnA Court Reporting - depositions of The Source Store, LLC, The Source ,LLC, M. Hodge, II, and G. Brown
3/19/2013	85.00	VENDOR: Tri-County Process Serving - service of trial subpoena upon N. Stuart
3/19/2013	85.00	VENDOR: Tri-County Process Serving - service of trial subpoena upon M. Baldner
3/20/2013	85.00	VENDOR: Tri-County Process Serving - service of trial subpoena upon J. Young
3/20/2013	36.00	VENDOR: Tri-County Process Serving - service of trial subpoena upon G. Brown
3/20/2013	36.00	VENDOR: Tri-County Process Serving - service of trial subpoena upon B. Bews
3/31/2013	636.00	VENDOR: DTI - trial boards
4/13/2013	266.45	VENDOR: QnA Court Reporting - transcribe conference call
11/25/2013	50.00	VENDOR: Tri-County Process Serving - service of amended trial subpoena upon G. Brown
11/25/2013	112.12	VENDOR: DTI - trial exhibits
11/26/2013	105.00	VENDOR: Tri-County Process Serving - service of amended trial subpoena
11/30/2013	431.55	Westlaw - online research
12/1/2013	26.25	Westlaw - online research
12/1/2013	188.64	Westlaw - online research
12/5/2013	30.00	VENDOR: Jade Welch - witness fee
	8,569.45	**Total**

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), and pursuant to Rule 11(a)(2)(B) moves the Court to reconsider its Findings of Fact and Conclusions of Law dated February 19, 2014 on the following grounds and for the following reasons:

A) The Court's Findings of Fact and Conclusions of Law entered on February 19, 2014 found the following facts, in relevant part:

> 5. For a number of years, Source 1 did not generate a yearly profit. During this time, Prehn made loans to Source 1 with the understanding that interest would accrue at 10% per annum. During this time, Prehn was

not paid salary for a number of months, with the understanding, that the salary would be paid in the future without interest. In an e-mail dated December 31, 2011, Jesse Arp, Source 1's in-house accountant/bookkeeper informed Hodge and Prehn that the present balance of the Prehn loan was $79,232.51, and that the present balance of the back salary owed to Prehn was $67,500. (footnote omitted). Source 1 has not made any further payment to Prehn on account of these obligations. While Hodge disputes that these amounts are owed, the Court found Prehn's testimony credible and persuasive. Hodge acknowledged the Prehn loan balance of $79,232 in a June 4, 2012 offer to buy out Prehn's interest in Source 1. (Footnote omitted).

12. Source 1's Operating Agreement contains the following relevant provisions upon a vote to dissolve:

14.2 Liquidation and Termination. . . .

(i) Winding Up, Liquidation and Distribution of Assets. The Liquidator shall sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members and Assignees in kind) and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

(i) *First,* payment of creditors, including Members and their Affiliates who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, other than liabilities for Distribution to Members (Emphasis added) (Footnote omitted);

22. Hodge did not use any of the proceeds from the auction to repay any part of the Prehn loan or Prehn's back salary.[1]

Accordingly, the Court concluded as a matter of law the following:

1. The Court concludes that, at the time of dissolution, Source 1 owed Prehn $67,500 in back salary. Source 1 has not repaid this obligation. Under the Operating Agreement, Hodge had an obligation to pay this obligation from the proceeds of the asset sale. Hodge violated the Operating Agreement by failing to use the auction proceeds to pay all or part of this obligation at or near the time of the auction.

[1] Findings of Fact and Conclusions of Law dated February 19, 2014, specifically, Findings of Fact, ¶¶ 5, 12 and 22, pp. 3, 4-6 and 10.

> 2. The Court concludes that, as of December 29, 2011, Source 1 owed Prehn a loan balance of $79,232.51, with interest accruing at the rate of 10% per annum. Source 1 has not paid this obligation. Under the Operating Agreement, Hodge had an obligation to pay this obligation from the proceeds of the asset sale. Hodge violated the Operating Agreement by failing to use the auction proceeds to pay all or part of this obligation at or near the time of the auction.[2]

The Court erred in concluding Mr. Hodge violated the Operating Agreement and therefore was personally liable for the Prehn loan and back salary. The Court's Order RE: Dissolution of The Source Store, LLC and Related Matters entered on May 17, 2012, prior to the auction, prohibited Mr. Hodge from making any distributions, including profits from processing of the Open Purchase Orders, until the litigation was completed, the parties all agreed or as otherwise ordered by the Court;[3]

B) The Court's Findings of Fact and Conclusions of Law entered on February 19, 2014 found the following fact:

> 28. Source 1 provided Hodge with a vehicle. On April 26, 2012, Source 1 still owed $19,761.22 on the vehicle. As of April 31, 2012, Source 1 showed that the vehicle had a value of $36,654.27. (Footnote omitted). Hodge paid off the balance owed by Source 1 on this vehicle on or about April 26, 2012.[4]

The Court concluded as a matter of law the following:

> 11. The Court will find that Source 1 should not have cancelled the balance Hodge owed on his loan in exchange paying the balance of Source 1 owed on this vehicle. The amount owed on the vehicle was $19,761.22. At the time, the vehicle had a value of $36,654.27. By paying the loan balance of $19,761.22, Hodge obtained a vehicle worth $36,654.37. The Court concludes this transaction was a breach of Hodge's fiduciary duty. Hodge improperly obtained the benefit of $16,893.05. Hodge must repay this amount to Source 1.[5]

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[2] *See id.*, Conclusions of Law, ¶¶ 1 and 2, p. 14.
[3] TR. Ex. 2011, ¶ 5. The Findings of Fact and Conclusions of Law recite certain provisions of the stipulated Order, but omits Section 5 expressed and incorporated therein.
[4] *See id.*, Findings of Fact, ¶ 28, p. 11.
[5] *See id.*, Conclusions of Law, ¶ 11, p. 20.

The evidence and testimony presented in the record was that the value of the vehicle in April, 2012 was between $21,249 and $22,663 and does not support the Court's conclusion.[6] The Court's reliance on the balance reflected on Source I' Balance Sheet of April, 2012 was in error and contrary to the evidence in concluding the value of vehicle. The amount showed on the April 2012 Balance Sheet reflected the original loan amount obtained by Source I at the time the vehicle was purchased in 2008. The amount showed on the balance sheet has never changed in any preceding or subsequent monthly balance sheet nor does the amount reflect the market value of the vehicle.[7] Assuming the highest value of vehicle of $22,663 and Mr. Hodge's personal assumption of Source 1's debt owed on the vehicle of $19,761.22, the proper measure and amount Mr. Hodge was unjustly enriched based on the evidence in the record was $2,901.78 ($22,663 - $19,761.22). The foregoing amount according to the evidence reflects the proper amount or equity lost by Source 1 in the vehicle and benefit appreciated by Mr. Hodge;

C) The Court found that:

> 27. In 2011, Source 1 lent Hodge $40,000. By April 26, 2012, the balance was $20,084.61. (Footnote omitted). Hodge has not made any further payment on this loan. Hodge asserts he voluntarily reduced his salary from Source 1 in 2012, and that the reductions should have been credited against the remaining loan balance.[8]

Accordingly, the Court concluded:

> 12. Since Hodge did not make any further payment on the loan, the Court concludes that Hodge is also liable for the personal balance of $20,084.61. Hodge asserted that he was entitled to a salary as Source 1's liquidator of $12,000 per month and that he did not take the full salary. Hodge argues that the difference should be applied to the loan. The Court does not agree. Under the Operating Agreement, Hodge was entitled to "reasonable compensation" as the Liquidator. During the dissolution period, Hodge was simultaneously acting as the Liquidator for Source 1,

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[6] TR. Ex. 1055

[7] TR. Ex. 1009. Source I's Balance Sheets for December, 2011, January through June 2012 show the same amount of $36,654.27

[8] Findings of Fact and Conclusions of Law dated February 19, 2014, Findings of Fact, ¶ 27, p. 11.

> and working for his new venture, Source 2. Hodge had Source 1 pay himself $103,386 to process the existing purchase orders of $825,716, and to liquidate Source 1. Hodge had Source 2 pay Hodge $9,999.97 during the same period. The Court concludes that Hodge was grossly insufficiently compensated by Source 2, and grossly overcompensated as Liquidator for Source 1. Hodge is not entitled to any "credit" for not drawing a salary of $12,000 per month as the Source 1 Liquidator.[9]

The Court erred in not granting Mr. Hodge a credit for personally assuming the debt of Source 1 on the vehicle of $19,761.22 and applying the assumption of that debt against his loan to Source 1. The Court's ruling that Mr. Hodge was not entitled to a credit for reducing his salary is not challenged, but rather, the Court did not credit Mr. Hodge on his loan for personally assuming and continuing to pay the debt and liability of Source 1 on the vehicle. Accordingly, the proper amount Mr. Hodge should have owed towards his loan was $323.39 for which the evidence further showed that Mr. Hodge issued Source 1 a payment of $300 for a remaining outstanding balance of $23.39 ($20,084.61 - $19,761.22 - $300);[10]

D) The Court found the following facts, in relevant part:

> 25. Source 1 purchased a license to use "Profit Maker" software for its business. Source 1 paid $8,000 to obtain the original license and its employees spent time making improvements and adding features. Hodge claims that he purchased the Profit Maker software at the Source 1 auction. However, prior to the May 18, 2012 auction, Hodge had already transferred this license to Source 2 without any reimbursement or payment to Source 1. (Footnote omitted).[11]

> 21. Acting as the Liquidator, Hodge was responsible for selling the assets of Source 1. The Source 1 assets were sold in an auction that took place May 18, 2012. The assets were divided into five lots as follows: 1. Shaker cup molds (possessed and used by a third party to manufacture Source 1 shaker cups); 2. Embroidery machines (used to customize Source 1 customer merchandise); 3. Office inventory (desks, computers, phones, software); 4. Intellectual property (good will and non-tangible property including names); 5. All lots. Prehn and Hodge submitted the following bids:
>
> Shaker cup molds

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[9] *See id.,* Conclusions of Law, ¶ 12, *p.* 21.
[10] TR. Ex. 1056.
[11] *See id.*, Findings of Fact, ¶ 25, p. 10.

Hodge: $40,200
Prehn: $96,000

Embroidery machines
Hodge: $10,100
Prehn: $9,000

Office Inventory
Hodge: $6,000
Prehn: $15,100

Intellectual Property
Hodge: $44,200
Prehn: $5,100

All of Lots 1-4
Hodge: $105,010
Prehn: $125,200[12]

Based on the foregoing facts, the Court concluded as a matter of law:

13. "The elements of unjust enrichment are that (1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit." (Citations omitted). Source 2 obtained a number of assets from Source 1 including the ProfitMaker software, the deposit on the second mold, and the balance of the discount for shaker cup purchases. The Court will find that Source 1 conferred these benefits on Source 2; that Source 2 appreciated the benefits; and that it would be inequitable to permit Source 2 to accept these benefits without payment of the value of the benefits. The Court also finds that Hodge breached his fiduciary duty to Source 1 by permitting these assets to be transferred without compensation to Source 1. The Court will also find that the conveyance of these assets was a violation of the Operating Agreement. The Court finds that the value of the ProfitMaker software license is $8,000; the value of the shaker cup credit is $18,287.83; and the value of the mold deposit is $12,400

The Court also concludes that Hodge was unjustly enriched by paying less than the value of the vehicle he obtained from Source 1 and by having his personal loan forgiven.[13]

14. The Court concludes that Hodge breached his fiduciary duties to Source 1 and the members by the manner in which he orchestrated the asset auction. Hodge created the situation by separating the intellectual property from the molds. By placing such a high bid on the intellectual property, Hodge assured that he

[12] *See id.,* Findings of Fact, ¶ 21, pp. 8-9.
[13] *See id.,* Conclusions of Law, ¶ 13, pp. 21-22.

would be certain to be the hi bidder on that item. Hodge bid $44,000. Prehn bid $5,000. As high bidder on the intellectual property, Hodge then asserted that no one except Hodge could use the molds for the intended purpose. Prior to the auction; Hodge did not advise any bidder that the molds could not be used for production unless the bidder also acquired the intellectual property. Hodge assured that no reasonable bidder would pay for the molds if the molds could not be used to manufacture cups. But for Hodge's manipulation of the auction, Source 1 would have received a total $165,310 from the high bids of Prehn and Hodge. Instead, Source 1 received $105,010. The Court finds that Source 1 has been damaged in the amount of $60,300.[14]

The Court erred in awarding Source I duplicate damages, separately, against Mr. Hodge and Source 2 for the same and only Profit Maker software program Source I possessed at the time of dissolution. The evidence will show that as of June 1, 2012, after the auction took place, the Profit Maker license had yet to be transferred to Source 2 because of a dispute of ownership between Mr. Prehn and Source 2. Mr. Brown's uncontradicted testimony at trial explained that the transfer of the Profit Maker software to Source 2 did not occur until June of 2012.

The uncontradicted evidence at trial established that the Profit Maker software program was a designated asset for the auction in Lot 3 under Office Inventory for which Mr. Prehn was the highest bidder, but elected not to fund his bid. Mr. Hodge tendered his bid amount for Lot 3 which the Court concluded was a breach of his fiduciary duties for manipulating the auction. As a result, the Court awarded Source 1 damages in the amount of $60,300 which amount was the difference from the high bids of Mr. Prehn and Mr. Hodge and the actual amount received by Source 1. This damage award includes the Profit Maker software program. The Court has in effect awarded Source 1 a double recovery for the Profit Maker software from both Source 2 and Mr. Hodge. The Court's award of $8,000 for the Profit Maker software against Source 2 should be vacated.

E) Finally, the Court found the following facts that:

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[14] *See id.,* Conclusions of Law, ¶ 14, p. 22.

11. On April 4, 2012, the members unanimously voted to dissolve Source 1 as of April 1, 2012.[15]

26. On April 9, 2012, Source 1 received Purchase Order No. FL24000014 from its largest customer, Bodybuilding.com. (Footnote omitted) The amount of the purchase order was $233,481.84. This was a very large order. Source 1 did not process this order. In a purchase order dated June 14, 2012, Bodybuilding.com placed an identical order with Source 2 as Purchase Order FL24000021. (Footnote omitted). This purchase order was not filled by Source 1. This purchase order was filled by Source 2.[16]

Based on the foregoing facts, the Court concluded the following:

6. The Court also concludes that Hodge breached his fiduciary duty to Source 1 by converting the April 9, 20122 Bodybuilding.com purchase order of $233,481 to Source 2. Bodybuilding.com placed this order with Source 1 prior to the formation of Source 2, and prior to the filing of Source 1's dissolution notice. This purchase order came about through the efforts of Source 1. Bodybuilding.com placed the same purchase order to Source 2 in June 2012. Prehn and Bandak have shown that Hodge improperly redirected this large sale to Hodge's new business, Source 2.[17]

Based on this conclusion of law, the Court further concluded that the subject Bodybuilding.com purchase order should have been filled by Source 1 during the dissolution process and could have generated additional operating profit to Source 1.[18]

This ruling ignores the undisputed and uncontradicted fact that ALL the members of Source 1 unanimously voted to dissolve the company effective April 1, 2012. The members voted, agreed and ratified that Source 1 would not take on new purchase orders and the evidence in the record confirms this fact. The evidence and testimony of Mr. Prehn at trial corroborated the fact that the existing purchase orders reflected in the Court's Order did not include the Bodybuilding.com purchase order despite all parties having actual knowledge of the purchase order. The Court's conclusion of law holds Mr. Hodge liable for complying with and following

[15] *See id.*, Findings of Fact, ¶ 11, p. 4.
[16] *See id.*, Findings of Fact, ¶ 26, p. 11.
[17] *See id.*, Conclusions of Law, ¶ 6, p. 19.
[18] *See id.*, Conclusions of Law, ¶ 7, p. 19.

the unanimous decision by the Members, including Plaintiffs. The lost profit analysis arrived by the Court should be recalculated by vacating the $233,841 Bodybuilding.com purchase order.

This motion is based upon the files and records herein, the Affidavits of Michael Hodge and George Brown and the Memorandum filed concurrently herein in support thereof.

The Defendants herein desire to present oral argument to the Court on this matter.

DATED this 18th day of March, 2014.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
Moffatt, Thomas, Barrett, Rock
Fields, Chartered
101 S. Capitol Blvd., 10th Fl.
P.O. Box 829
Boise, Idaho 83701
Attorneys for Plaintiffs

✓ by U.S. Mail
_____ by Hand Delivery
_____ by Facsimile
_____ by Electronic Mail

Ed Guerricabeitia

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Attorneys for Defendants
Michael L. Hodge II, The Source Store, LLC and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

AFFIDAVIT OF MICHAEL HODGE, II IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATE OF IDAHO)
) ss
County of Ada)

MICHAEL HODGE, II, being first duly sworn, deposes and says:

I am one of the Defendants and the Managing Member and Liquidator for Defendant, The Source Store, LLC ("Source 1") and a member and President of the Defendant, The Source,

LLC ("Source 2") in this matter and make this Affidavit based upon my own personal knowledge.

As the Managing Member of Source 1, I knew and agreed to Source 1 securing a loan for the subject vehicle referenced by the Court in this lawsuit. The amount shown on Source 1's April 2012 balance sheet for the vehicle did not reflect the market value of the vehicle at that time, but instead, the $36,654.27 amount shown was the loan amount Source 1 secured for the vehicle.

The same amount of $36,654.27 is shown on all of Source 1's balance sheets since the loan was secured and the truck was acquired in 2008.

DATED this 18th day of March, 2014.

M Hodge II
Michael Hodge, II

SUBSCRIBED AND SWORN before me, a Notary Public, this 18th day of March, 2014.

LAYNE MCMILLAN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise
My commission expires: 6/18/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
Moffatt, Thomas, Barrett, Rock
Fields, Chartered
101 S. Capitol Blvd., 10th Fl.
P.O. Box 829
Boise, Idaho 83701
Attorneys for Plaintiffs

✓ by U.S. Mail
_____ by Hand Delivery
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_____ by Electronic Mail

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Attorneys for Defendants
Michael L. Hodge II, The Source Store, LLC and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

AFFIDAVIT OF GEORGE BROWN IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

STATE OF IDAHO)
) ss
County of Ada)

GEORGE BROWN, being first duly sworn, deposes and says:

I was one of the Defendants and a working member of Defendant, The Source Store, LLC ("Source 1") and currently a working member of Defendant, The Source, LLC ("Source 2") in this matter and make this Affidavit based upon my own personal knowledge.

Attached hereto and incorporated herein is a true and correct e-mail I received on June 1, 2012 from Bobbi Feist who handled the transfer of the Profit Maker software for ASI Computer Systems, marked as Exhibit A.

I am familiar with and know Don Prehn's personal e-mail address. The e-mail I received from Bobbi Feist was also sent to Don Prehn personal e-mail address.

I testified at the trial held on December 4, 2013, that Source 2 did not receive the Profit Maker license until June of 2012. The transfer of the license was not completed until after I received this email.

DATED this ___ day of March, 2014.

George Brown

SUBSCRIBED AND SWORN before me, a Notary Public, this 18th day of March, 2014.

AYN McMILLAN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Boise
My commission expires: 6/18/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
Moffatt, Thomas, Barrett, Rock
Fields, Chartered
101 S. Capitol Blvd., 10th Fl.
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Boise, Idaho 83701
Attorneys for Plaintiffs

✓ by U.S. Mail
_____ by Hand Delivery
_____ by Facsimile
_____ by Electronic Mail

Ed Guerricabeitia

Ed Guerricabeitia

From: Bobbi Feist <bobbif@asicomp.com>
Sent: Friday, June 01, 2012 12:47 PM
To: donprehn@gmail.com; Mike Brown
Subject: ProfitMaker License CRM:00142256

Good Afternoon Gentlemen!

I just spoke to our VP about the dissolution of your partnership and how that affects the current ProfitMaker License. Since both parties have indicated to me that they retain the license to the ProfitMaker system we are going to require a legal listing of retained assets for both sides of the dissolved partnership.

We value the long term business partnership that we have had with The Source Store and we would like to continue that relationship with all parties involved. To that end, we would like to offer whoever does not retain the ProfitMaker license the opportunity to purchase a new license at a substantial discount. Once you provide the list of retained assets (by individual party), we'll know who the offer should be made to, and I will be in contact with that person to go over the details.

In the meantime, please do not hesitate to contact me if you have any questions.

Thank you,

Bobbi Feist
Bobbi Feist
Upgrade Sales
ASI Computer Systems, Inc.
Direct - 319-859-3973
Fax - 319-266-7693
Email bobbif@asicomp.com

ASI COMPUTER SYSTEMS®

DEFENDANT'S EXHIBIT
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Attorneys for Defendants
Michael L. Hodge II, The Source Store, LLC and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), by and through their attorneys, Davison, Copple, Copple & Copple, and hereby submit their Memorandum in support of their Motion for Reconsideration.

I. Standard of Review

Rules 11(a)(2)(B) of the Idaho Rules of Civil Procedures states:

> (B) Motion For Reconsideration. A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59€, 59.1, 60(a) or 60(b).

On a motion for reconsideration, the Idaho Supreme Court has interpreted this procedure as follows:

> A rehearing or reconsideration in the trial court usually involves new or additional facts, and a more comprehensive presentation of both law and fact. Indeed, the chief virtue of a reconsideration is to obtain a full and complete presentation of all available facts, so that the truth may be ascertained, and justice done, as nearly as may be. *J.I. Case Company v. McDonald,* 76 Idaho 223, 229 (1955).

In *Johnson v. Lambros,* 143 Idaho 468, 147 P.3d 100 (Idaho App.2006), the Idaho Court of Appeals held that Rule 11(a)(2)(B) permitted a party to present new evidence when a motion was brought under this rule, however, they were not required to do so in order for the motion to be heard. *See id.*

The Court reviewed the Idaho Supreme Court's holdings in *Coeur D'Alene Min. Co. v. First Nat. Bk., supra.*, as well as other decisions, and noted that trial court could reconsider its own order for facial errors or errors of law, but the burden was upon the moving party to draw to the court's attention those errors of fact or law.

> None of these authorities preclude reconsideration of a trial court's interlocutory decision on the bases of the initial evidence. Indeed, a rule requiring new evidence on a motion for reconsideration would be a cause for concern. It would prevent a party from drawing the trial court's attention to errors of law or fact in the initial decision, precluding correction of even flagrant errors except through appeal.

> Accordingly, we hold that the absence of new evidence accompanying Johnson's motion for reconsideration did not, standing alone, require the motion be denied.

Id., 143 Idaho at 473.

A decision to grant or deny a motion for reconsideration generally rests in the sound discretion of the trial court. *Straub v. Smith,* 145 Idaho 65, 71, 175 P.3d 754 (2007).

In the case at bar, Defendants respectfully request the Court to reconsider its Findings of Fact and Conclusions of Law entered February 19, 2014 and draw to the Court's attention errors of fact and law in its decision for correction which are explained below.

II. The Court's Order entered on May 17, 2012 controlled and prohibited Hodge from distributing any funds.

As outlined in the Motion, the Court ruled that Source 1 was liable for Prehn's loan and back salary which is not in dispute. However, the Court also ruled that Hodge was jointly and severally liable for the same debts owed by Source 1 because he breached the Operating Agreement by failing to issue payment for all or part of these obligations from the auction proceeds.[1]

The decision found that the lawsuit was filed April 27, 2012 which happened to be 23 days after All the members unanimously voted to dissolve the company effective April 1, 2012.

On May 8, 2012, the parties stipulated to entry of the Order RE: Dissolution of the Source Store, LLC and Related Matters which Order was memorialized and filed on May 17, 2012. Among the terms in the Order, paragraph 5 stated:

> All funds, amounts, credits, offsets and other monies properly paid to, payable or accrued to or actually received by Source 1, including without limitation in connection with the Dissolution, processing of the Existing Purchase Orders, **the**

[1] Findings of Fact and Conclusions of Law dated February 19, 2014, Conclusions of Law, ¶¶ 1 & 2, p. 14.

sale of the assets or otherwise, shall be deposited in the Source 1 operating account no. 0102010790 at Syringa Bank in Boise, Idaho 9the "Dissolution Account"). Once the dissolution is complete with the receipt and collection of the funds for the open auction of the Assets and processing of Existing Purchase Orders, Defendant Hodge will provide to all parties a full and complete accounting reflecting the monies received and the expenses paid during the Dissolution process. The parties acknowledge and agree that Defendant Hodge has already provided to all parties a number of business records for the first quarter of 2012, including but not limited to Customer Lists, Existing Purchase Orders for domestic and international projects, Inventory List of Company Assets, and other business records. No checks shall be written on and no funds shall be withdrawn from the Dissolution Account; provided, however, that bona fide and legitimate costs and expenses of Source 1 arising from the Dissolution and consistent with the parameters set forth in paragraphs 1 and 4 may be paid from the Dissolution Account. In addition, 2011 profits in the amount of $65,000.00 may be distributed to all Members of Source 1, **but no other distributions, including profits from processing of the Open Purchase Orders, shall be made until the litigation is complete, the parties all agree or as otherwise ordered by the Court.** (Emphasis added).

The Order was binding on all parties in this lawsuit. *See* Order, ¶ 10.

The auction was held on May 18, 2013.

The Order was binding and prohibited Hodge from distributing any funds received during the dissolution process until the litigation was complete, the parties all agreed or ordered by the Court. Until the Court entered its Findings of Fact and Conclusions of Law, Hodge had no legal authority to distribute any funds other than bona fide and legitimate costs and expenses of Source 1. As the Court recognized, Hodge disputed the amount owed to Prehn which amount has since been resolved by this Court. Notwithstanding, Hodge should not be held personally for a debt owed by Source 1.

The Court's Order trumped the Operating Agreement and controlled over when the distribution of funds were to be made. The Operating Agreement, itself, recognized a possible legal limitation for distributing payments to creditors:

14.2 Liquidation and Termination. . . .

(i) Winding Up, Liquidation and Distribution of Assets. The Liquidator shall sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent the Members may determine to distribute any assets to the Members and Assignees in kind) and shall apply the proceeds of such sale and the remaining Company assets in the following order of priority:

(i) *First,* payment of creditors, including Members and their Affiliates who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Company, other than liabilities for Distribution to Members (Emphasis added)

Idaho Code § 30-6-304 entitled "Liability of members and managers" states in relevant part:

(1) The debts, obligations or other liabilities of a limited liability company, whether arising in contract, tort or otherwise:
(a) Are **solely** the debts, obligations or other liabilities of the company; and
(b) Do not become the debts, obligations or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager. (Emphasis added).

The Court ruled that Hodge's failure to issue payment towards Prehn's loan and back salary was a violation of the Operating Agreement and therefore subjected him to personal liability on Source 1's debt to Prehn. Based on the Court's Order which was issued prior to the auction and Idaho Code § 30-6-304, Hodge should be relieved of personal liability of Source 1's debts to Prehn and such correction should be made to the Court's Findings of Fact and Conclusions of Law and any subsequent judgment entered by the Court.

III. The Evidence at trial did not support the Court's finding that the value of the vehicle in April, 2012 was $36,654.27 and therefore, the Court's award of damages to Source 1 in the amount of $16,893.05 against Hodge for unjust enrichment is incorrect.

The Court ruled Hodge was unjustly enriched by cancelling the balance of his loan in exchange for accepting the vehicle and assuming Source 1's loan owed on the vehicle. The

Court found that the value of the vehicle was $36,654.37 based on Source 1's Balance Sheet for April, 2012.[2] The Court also found that Source 1's debt owing on the vehicle was $19,761.22.[3] Accordingly, the Court's value of the vehicle was subtracted from Source 1's debt which Hodge assumed resulting in an unjust enrichment claim against Hodge in the amount of $16,893.05.

Defendants are not challenging the method in which the Court applied in arriving at its calculation of damages for unjust enrichment. However, the evidence at trial asserted by both sides was the value of the vehicle was approximately $21,000 to $22,000 at the time of dissolution.

The evidence in the record showed that the vehicle had a market value of $22,663 according to Edmunds.com Private Party Sale and $21,459 according to Kelly Blue Book Private Party Sale.[4] Plaintiffs corroborate this fact.[5]

The Court's reliance on the number reflected in Source 1's April balance sheet for the vehicle is misplaced and erroneous for the purpose concluding the value of the vehicle in April, 2012. The number reflected on the balance sheet is the exact same on Source 1's balance sheets for December 2011 through June 2012.[6] The number designated on the balance sheets was not a reflection of the value of the vehicle, but reflected the original loan amount Source 1 secured to

[2] *See id.,* Findings of Fact, ¶ 28, p. 11. *See also,* Conclusions of Law, ¶ 11, p. 20.
[3] *See id.*
[4] TR. Ex. 1055 which was stipulated by the parties in the Stipulation to the Parties' Trial Exhibits filed with the Court on November 27, 2013.
[5] *See* Plaintiffs' Closing Argument, pp. 12-13. ("In making his calculation, Hodge appears to have purposefully failed to consider the fact that he was taking ownership of a truck with a value of approximately $20,000.").
[6] TR. Ex. 1009.

purchase the vehicle in 2008. The designated number never changed on the "Asset" side of the balance sheet ledger, but did on the "Liability" side reflecting the reduction of the loan amount.[7]

Applying the Court's method at arriving at damages for unjust enrichment, the competent evidence in the record reflected the value of the vehicle approximately at $20,000. Assuming the Court finds the value of the vehicle at $22,663 (the highest amount in the record), then deducts Source 1's loan amount which Hodge personally assumed and continues to pay, the difference or benefit Hodge appreciated on the vehicle based on the Court's conclusion would have been $2,901.78.

Defendant Hodge respectfully requests that the Court correct and reduce its award of damages of $16,893.05 for unjust enrichment in favor of Source 1.

IV. The Court's erred by not granting Hodge a credit toward his loan owed to Source 1 for personally assuming Source 1's loan on the vehicle.

The Court found that Hodge's loan balance owed to Source 1 on April 26, 2012 was $20,084.61 and ruled that he was not entitled to any credit towards his loan for reducing his salary of $12,000 per month as the Source 1 Liquidator.[8] Defendant does not challenge this basis of the Court's ruling. However, the Court erred by not granting Hodge a credit towards his loan owed to Source 1 for personally assuming and continuing to pay the debt and liability of $19,761.22 owed by Source 1 on the vehicle.

The loan on the vehicle was a legitimate liability and debt owed by Source 1 which would have required Source 1 to repay any balance owing to the financial institution carrying the loan. Hodge personally assumed Source 1's debt on the vehicle which relieved Source 1 from its

[7] TR. Ex. 1009 (April 2012 Balance Sheet). The Liability section on the ledger reflects the remaining loan amount owing on the vehicle as of April 2012 was $19,761.22.
[8] Findings of Fact and Conclusions of Law dated February 19, 2014, Findings of Fact, ¶ 27, p. 11 and Conclusions of Law, ¶ 12, p. 21.

legal obligation in exchange for relieving him of his debt to the company. In other words, Hodge and Source 1 swapped each other's debt.

Source 1 received a benefit from Hodge for personally assuming its debt which should have been credited against his loan balance owed to Source 1. Otherwise, the Court's ruling would essentially penalize Hodge approximately $40,000 which would include the repayment of his loan in full plus personally assuming Source 1's debt for no consideration.

Accordingly, the proper amount and balance Hodge should have owed on his loan to Source 1 should be $323.39 ($20,084.61 - $19,761.22).

Furthermore, the uncontradicted evidence in the record showed that Hodge made an additional payment of $300 to Source 1 towards his debt owed which further reduced his balance owed to $23.39.[9]

Defendant Hodge respectfully requests that the Court correct and reduce its award of damages of $20,084.61 in favor of Source 1 for Hodge's personal loan.

V. <u>The Court's erred in awarding Source 1 duplicate damages against Source 2 and Hodge, personally, for the Profit Maker software program.</u>

The Court found that Hodge transferred the Profit Maker license to Source 2 without compensation **before** the auction held on May 18, 2012 and therefore Source 2 was unjustly enrichment in the amount of $8,000 which should be paid back to Source 1.[10]

The Court also found the auction held on May 18, 2012 divided Source 1's assets into five lots, one of which was the Office Inventory which referenced Source 1's software

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[9] TR. Ex. 1056.

[10] Findings of Fact and Conclusions of Law dated February 19, 2014, Findings of Fact, ¶ 25, p. 10 and Conclusions of Law, ¶ 13, p. 22.

programs.[11] The Court ruled that Hodge breached his fiduciary duty to Source 1 and its members in manipulating the auction and therefore damaging Source 1 in the amount of $60,300 which was the difference between what Source 1 could have received if Prehn funded his bid amounts to what Source 1 actually received.[12]

It was undisputed that the Profit Maker software program was part of Lot 3 in the auction. Prehn testified that the primary reason for bidding on the office inventory was to retain the Profit Maker software program. Even though Prehn's bid on the office inventory was never in dispute, Prehn elected not to pay his bid on the asset Lot.

The Court's finding that the Profit Maker software program was transferred before the auction was held is erroneous. On June 1, 2012, **after** the auction, there still remained a dispute between Prehn and Hodge as to which party should retain the Profit Maker license. *See* Affidavit of George Brown, Ex. A.

Mr. Brown testified that Source 2 did not receive the Profit Maker license until June 2012 which testimony was undisputed. Source 2 was able to retain the Profit Maker license because Source 1 issued it a Bill of Sale after Prehn failed to pay his bid amount.[13]

Currently, Source 2 retains the Profit Maker license, however, the transfer did not occur until after the auction, thus Source 2 had not been unjustly enriched to the detriment of Source 1 because Source 1 did receive payment through the auction. Furthermore, any damage to Source

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[11] *See id.,* Findings of Fact, ¶21, pp. 8-9.
[12] *See id.,* Conclusions of Law, ¶ 14, p. 22.
[13] TR. Ex. 1064. Note: the Bill of Sale was not issued until May 23, 2012 in accordance with the auction instructions because of Prehn's failure to pay Source 1 his bid amount. *See also,* TR. Ex. 1060 ("If you have been awarded assets you will have until 5pm Tuesday May 22nd to submit payment. If you do not submit payment with confirmed receipt from Mike Hodge by 5pm the assets will be awarded to the next highest bid. An additional 24 hours will be given to the next highest bid to fund the purchase.").

1 associated with the Profit Maker software has been awarded by the Court against Hodge, personally, through the auction shortfall.

Source 1 possessed only one Profit Maker software program and the Court's award against both Source 2 and Hodge, personally, in essence provides Source 1 a double recovery for the same asset.

Defendant Source 2 respectfully requests that the Court correct and vacate its award of damages of $8,000 for the Profit Maker software license in favor of Source 1.

In the alternative, Defendant Hodge respectfully requests that the Court correct and reduce its award of damages of $60,300 by $8,000 for the auction shortfall in favor of Source 1.

VI. The Court's erred by including the Bodybuilding.com Purchase Order in arriving at its calculation of damages for Lost Profit sustained by Source 1 during the dissolution.

The Court ruled that Hodge breached his fiduciary duty to Source 1 by not accepting and processing the Bodybuilding.com P.O. that was submitted on April 9, 2012 and therefore the P.O. should have been included in the total sales that Source 1 should have filled during the dissolution.[14]

The Court's ruling ignores the undisputed, substantial and competent evidence that Hodge did not breach his fiduciary duty to Source 1 for not accepting the P.O.

1) The undisputed evidence showed that ALL the members, including Plaintiffs, unanimously voted to dissolve Source 1 effective April 1, 2012;[15]
2) All the members were present at the telephone conference with Source 1's then attorney, Michael Baldner, on April 13, 2012 who explained to all of them that the

[14] Findings of Fact and Conclusions of Law dated February 19, 2014, Conclusions of Law, ¶¶ 6 & 7, p. 19.
[15] *See id.*, Findings of Fact, ¶ 11, p. 4.

day the members voted to dissolve the company, the company would not take on any new orders;[16]

3) Hodge, as liquidator, had all the power and authority of the Members;[17]

4) Hodge advised all members, including their counsel, on several occasions prior to the hearing on May 8, 2012, that he was not taking on any new purchase orders, including the Bodybuilding.com P.O.;[18]

5) On May 8, 2012, the parties stipulated that Source 1 would process only the first quarter existing purchase orders which did not include Bodybuilding.com's P.O. despite the knowledge of all members. The parties stipulation was memorialized by the Court's Order dated May 17, 2012.[19]

6) The Order released both Prehn and Hodge from their non-competition agreements with Source 1 on May 18, 2012;[20]

7) Prehn contacted and attempted to retain Bodybuilding.com's business which included the subject P.O. which was still an open order for either Prehn or Hodge;[21] and

8) On June 14, 2012, Source 2 received and filled the purchase order.[22]

The Court's ruling faults Hodge for abiding and following the Members' unanimous vote to dissolve Source 1 effective April 1, 2012, the representations made to all the members by the company's attorney and the parties' stipulated agreement. At the same time, the Court faults Hodge for not abiding by the parties agreement. Hodge was in a precarious situation as

[16] TR. Ex. 1002, Transcription, Ll. 19-24, p. 29
[17] TR. Ex. 1003, ¶ 14.2, p. 23.
[18] *See* TR. Exs. 1049, 1052, 1058, and 163.
[19] TR. Ex. 2011.
[20] *See id.*, ¶ 6.
[21] TR. Ex. 1065
[22] Findings of Fact and Conclusions of Law dated February 19, 2014, Findings of Fact, ¶ 26, p. 11.

Liquidator where on one hand he was liable for taking action and yet on the other, he was liable for not taking action. The liability imposed by the Court favored Plaintiffs only, not all members of Source 1.

Notwithstanding, Defendant Hodge respectfully requests that the Court correct and recalculate its award of damages of $114,530 for lost profits in favor of Source 1 by removing the Bodybuilding.com P.O. in its calculation.

VII. Conclusion

Based upon the foregoing arguments and evidence admitted in the record, the Defendants respectfully request this Court to enter its Order granting Defendants' Motion for Reconsideration and correct its Findings of Fact and Conclusions of Law and any subsequent judgments, hereafter.

DATED this 18th day of March, 2014.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
Moffatt, Thomas, Barrett, Rock
Fields, Chartered
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P.O. Box 829
Boise, Idaho 83701
Attorneys for Plaintiffs

✓ by U.S. Mail
_____ by Hand Delivery
_____ by Facsimile
_____ by Electronic Mail

Ed Guerricabeitia

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Attorneys for Defendants
Michael L. Hodge II, The Source Store, LLC and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' OBJECTION TO PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS AND MOTION TO DISALLOW ATTORNEY FEES AND COSTS

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), and pursuant to Rules 54(d)(6) and 54(e)(6) of the Idaho Rules of Civil Procedure and hereby file their Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney fees and costs on the grounds and for the reasons that:

1) Plaintiffs' were not the prevailing party against Defendants George M. Brown and Christopher Claiborne warranting reimbursement of $90.40 and $221.20, respectively, for process service of said Defendants as a cost as a matter of right under Rule 54(1)(C)(2) nor should Defendants, Hodge, Source 1 or Source 2 be liable for said costs;

2) Jesse Arp did not testify at trial or by deposition is this matter and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the filing fee of the Interstate Subpoena Duces Tecum or service fee of the Subpoena Duces Tecum for Jesse Arp in the amounts of $200.00 and $545.00, respectively;

3) The service fee for the subpoena duces tecum upon Syringa Bank was unreasonable and unnecessary as Plaintiffs already possessed Source's 1 financial records through discovery and therefore Defendants, Hodge, Source 1 nor Source 2 should be liable for the cost of $85.00;

4) Michael Baldner did not testify at trial or by deposition in this matter and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the multiple service fees of the Subpoena Duces Tecum or Amended Subpoena Duces Tecum for Michael Baldner in the amounts of $85.00, $85.00 and $105.00;

5) No representative of Bodybuilding.com testified at trial or by deposition in this matter and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the multiple service fees of the Subpoena Duces Tecum to Chris Halstead or Bodybuilding.com in the amounts of $94.00; 94.00 and $90.40;

6) Plaintiffs' did not call Neal Stuart to testify at trial or by deposition and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the service fee of the trial subpoena to Neal Stuart in the amount of $85.00;

7) Plaintiffs' did not call Janae Young to testify at trial or by deposition and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the service fee of the trial subpoena to Janae Young in the amount of $85.00;

8) Plaintiffs' did not call George Brown to testify at trial and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the service fees of the trial subpoenas to George Brown in the amounts of $36.00 and $50.00;

9) Plaintiffs' did not call Blair Bews to testify at trial or by deposition and neither Defendants, Hodge, Source 1 or Source 2 should be liable for the service fee of the trial subpoena to Blair Bews in the amount of $36.00;

10) Plaintiffs' costs for westlaw charges, discovery, mediation and trial exhibits as discretionary costs totaling $3,062.05 were necessary or exceptional costs reasonably incurred nor should these costs in the interest of justice be assessed against Defendants, Hodge, Source 1 or Source 2;

11) Plaintiffs were not the prevailing party on all claims alleged against Defendant Source 2 warranting an award of attorney fees against it under I.R.C.P 54(e), Idaho Code §§ 12-120(3), 12-121 or 30-6-906(2);

12) Plaintiffs were not the prevailing party on all claims alleged against Defendant Hodge warranting an award of attorney fees against him under I.R.C.P 54(e), Idaho Code §§ 12-120(3), 12-121 or 30-6-906(2);

13) Plaintiffs claim for attorney fees in amount of $250,014.32 is unreasonable and excessive;

14) Defendants did not defend this case frivolously, unreasonably or without foundation under Idaho Code § 12-121 and I.R.C.P. 54(e)(1);

15) To the extent, Plaintiffs' were the prevailing party, if at all, said costs for attorney fees should be properly apportioned and allocated against each Defendant;

16) Plaintiffs have failed to allocate the amounts and scope of services applied against each individual Defendant and for each cause of action asserted against each individual Defendant

This motion and objection is made and based on the records and files herein and the memorandum in opposition to Plaintiffs' Memorandum of Attorney Fees and Costs and Affidavit of Ed Guerricabeitia. Defendants request oral argument on the Motion.

DATED this 19th day of March, 2014.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
ED GUERRICABEITIA, of the firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
Moffatt, Thomas, Barrett, Rock
Fields, Chartered
101 S. Capitol Blvd., 10th Fl.
P.O. Box 829
Boise, Idaho 83701

✓ by U.S. Mail
_____ by Hand Delivery
_____ by Facsimile
_____ by Electronic Mail

Ed Guerricabeitia

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Attorneys for Defendants
Michael L. Hodge II, The Source Store, LLC and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

AFFIDAVIT OF ED GUERRICABEITIA IN SUPPORT OF DEFENDANTS' OBJECTION TO PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS AND MOTION TO DISALLOW ATTORNEY FEES AND COSTS

STATE OF IDAHO)
) ss
County of Ada)

ED GUERRICABEITIA, being first duly sworn, deposes and says:

1) I am one of the attorneys for the Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2") in this matter and make this Affidavit based upon my own personal knowledge.

2) I am personally familiar with the legal services rendered in this action and the amount of time expended by attorneys of Davison, Copple, Copple & Copple in the defense of Plaintiffs' claims against said Defendants.

3) The total number of hours expended by attorneys of Davison, Copple, Copple & Copple in defending this action was 512.93 hours. These hours include time for preparing for trial twice.

4) The law firm of Davison, Copple, Copple & Copple did not undertake representation of Defendant Source 1 until August 26, 2013. Prior to our representation, Source was represented by Judy Geier of the firm Evans Keane.

5) The number of hours expended by Plaintiffs' counsel versus the number of hours expended by Davison, Copple, Copple & Copple is approximately 3 times more. The number of hours that Plaintiffs' counsel expended to prosecute and prevail on five (5) of nineteen (19) causes of action asserted is unreasonable and excessive.

DATED this 19th day of March, 2014.

Ed Guerricabeitia

SUBSCRIBED AND SWORN before me, a Notary Public, this 19th day of March, 2014.

KATHY A. FUHA NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at: Eagle Idaho
My commission expires: 6/14/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

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Attorneys for Defendants
Michael L. Hodge II, The Source Store, LLC and The Source, LLC

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' MEMORANDUM IN SUPPORT OF OBJECTION TO PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS AND MOTION TO DISALLOW ATTORNEY FEES AND COSTS

COME NOW the Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), by and through their attorneys of record, Davison, Copple, Copple & Copple, and hereby moves the Court pursuant to Rules 54(d)(6) and 54(e)(6) of the Idaho Rules of Civil Procedure to enter its Order denying in part Plaintiffs' Memorandum of Attorney Fees and Costs on the grounds and for the reasons set forth in Defendants' Objection and Motion. This memorandum is based upon

and supported by the Affidavit of Ed Guerricabeitia filed concurrently herewith and the foregoing case authority and legal arguments.

I. INTRODUCTION

On April 27, 2012, Plaintiffs filed their First Amended Complaint where Prehn, individually, and in a derivative action on behalf of Source 1 complained against Michael Hodge, Source 1, Source 2, George Brown and Christopher Claiborne. Plaintiffs' First Amended Complaint alleged thirteen (13) causes of action against Defendants. The following is a breakdown of the causes of action and against whom the claim was for and against:

	Claimant	Cause of Action	Respondent
1)	Prehn	Breach of Loan & Back Salary	Source 1
2)	Source 1 derivative	Breach of Operating Agreement	Hodge
3)	Source 1 derivative	Breach of Non-Compete	Hodge
4)	Source 1 derivative	Breach of Fiduciary Duty	Hodge
5)	Prehn	Breach of Covenant GF & FD	Hodge
6)	Source 1 derivative	Breach of Loan w/ Source 1	Hodge
7)	Source 1 derivative	Violation of Id. Trade Secrets Act	All Defendants
8)	Source 1 derivative	Violation of Lanham Act	Source 2
9)	Source 1 derivative	Common Law Trade Name & Trademark	Source 2
10)	Source 1 derivative	Unjust Enrichment	Source 2
11)	Source 1 derivative	Tortious interference w/ Contract	Source 2
12)	Source 1 derivative	Constructive Trust	All Defendants
13)	Source 1 derivative	Injunctive Relief	All Defendants

On or about June 29, 2012, Plaintiffs filed their Second Amended Complaint, asserting verbatim the exact same factual basis and causes of action alleged in their First Amended Complaint and added a factual basis arising from the auction of Source 1 assets and asserted six (6) new causes of action therefrom.[1]

1 *See* Second Amended Complaint. The Second Amended Complaint added 11 new paragraphs to the factual basis as ¶¶ 56 through 67 in support of the six new causes of action alleged in the Second Amended Complaint.

The following is a breakdown of the new causes of action and against whom the claim is for and against added in the Second Amended Complaint, in addition to the initial 13 causes of action:

	Claimant	Cause of Action	Respondent
14)	Prehn	Breach of Warranties	Hodge & Source 1
15)	Prehn	Unconscionable Auction Contract	Hodge & Source 1
16)	Prehn	Fraud	Hodge & Source 1
17)	Prehn	Promissory Estoppel	Hodge & Source 1
18)	Prehn	Equitable Estoppel	Hodge & Source 1
19)	Prehn & Bandak	Declaratory Relief	Hodge & Source 1

The Court set the case for a four (4) day court trial to commence on April 1, 2013.

On or about March 4, 2013, Plaintiffs and Defendants voluntarily dismissed with prejudice nine (9) of the nineteen (19) causes of action alleged in the Second Amended Complaint, specifically, the following Counts:

Count 7: Violation of Idaho Trade Secrets Act;
Count 8: Violation of Lanham Act;
Count 9: Common Law Trade Name and Trademark Infringement;
Count 14: Breach of Warranties;
Count 15: Unconscionable Auction Contract;
Count 16: Fraud;
Count 17: Promissory Estoppel;
Count 18: Equitable Estoppel; and
Count 19: Declaratory Relief.

Defendants Hodge, Source 1 and Source 2 prevailed on these causes of action. *Straub v. Smith,* 145 Idaho 65, 175 P.3d 754 (2007).

On June 6, 2013, the Court entered its Order dismissing the foregoing causes of action with Prejudice. The parties **did not stipulate or agree** that each party would bear their own attorney fees and costs incurred and arising from the dismissed causes of action.

On or about March 5, 2013, Plaintiffs and Defendant Christopher Claiborne stipulated to the dismissal of all claims with prejudice against each other which Order was entered on June 6, 2013.

On or about March 7, 2013, Plaintiffs and Defendant George Brown stipulated to the dismissal of all claims with prejudice against each other which Order was entered on June 6, 2013.

On the day of trial, Defendant Hodge and Source 2 moved for the exclusion of damages, specifically, those damages alleged in Plaintiffs' Exhibits 164, 165, 166 and 167, disclosed by Plaintiffs one (1) week before trial despite Defendants having requested such information five (5) months before trial. Rather than exclude the evidence entirely at trial, the Court elected to vacate the trial to provide Defendants an opportunity to review, assess and defend the untimely disclosed evidence. The new trial was scheduled for December 4, 2013. At trial, Plaintiffs argued and asserted liability and damages pursuant to the remaining ten (10) causes of action. Plaintiffs sought damages in excess of **$871,458.00**

On February 19, 2014, the Court entered its Findings of Fact and Conclusions of Law. Accordingly, the Court held and ruled the following causes of action had been established against each Defendant:

1) Source 1 was liable to Prehn for his loan and back salary;

2) Source 2 was liable to Source 1 for unjust enrichment;

3) Hodge was jointly and severally, liable to Prehn for breaching the Operating Agreement for failing to pay all or part of Prehn's loan and back salary from the auction proceeds

4) Hodge was personally liable to Source 1 for (a) breaching his fiduciary duties to Source 1 for failing to minimize the general and administrative expenses; (b) breaching his loan repayment to Source 1; (c) unjust enrichment on the value of the vehicle;[2] and (d) breaching his fiduciary duty to Source 1 in the manner he orchestrated the asset auction.

The Court awarded damages against Source 1 and Hodge, jointly and severally in favor of Prehn for his loan and back salary in the amount of $79,232.00, plus interest at the rate of 10% per annum and $67,500.00, respectively; against Source 2 and Hodge, jointly and severally in favor of Source 1 in the amount of $38,687.83 for unjust enrichment; and against Hodge, personally, in the amount of $211,807.66 for the claims set forth above. In total, Plaintiffs, collectively, were awarded $397,227.49, not including interest on Prehn's loan, or less than half of what Plaintiffs sought at trial.

Based on a reading of the Court's Findings of Fact and Conclusions of Law, the Court did not find liability nor awarded damages for the following causes of action:

1) Breach of Non-Compete agreement;
2) Breach of Covenant of Good faith and Fair Dealing;
3) Tortious Interference with Contract;
4) Constructive Trust; and
5) Injunctive Relief.

On March 5, 2014, Plaintiffs filed its Memorandum of Attorney Fees and Costs, representing Plaintiffs incurred $5,507.40 in costs as a matter of right and $3,062.05 discretionary costs. In addition, Plaintiffs represent that their counsel and paralegal expended a total of 1,532.60 hours in prosecuting Plaintiffs' claims for a total amount, less a courtesy discount, of $250,014.32.

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2 Plaintiffs' Second Amended Complaint did not allege or seek an unjust enrichment claim against Hodge, individually.

At the same time, Defendants' counsel expended a total of 512.93 hours defending Plaintiffs' claims as of January 3, 2014, not including the time incurred by Source 1's then counsel, Judy Geier. *See* Aff. of Guerricabeitia. Ms. Geier represented and defended Source 1 and only the claims asserted against it.

Currently, Defendants Hodge and Source 2 have filed a pending Motion for Reconsideration before the Court which outcome may affect the Court's prevailing party analysis for attorney fees and costs under the Idaho Rules of Civil Procedure. Defendants request the right to make additional arguments in support of its Objection and Motion depending on the Court's ruling on the pending Motion for Reconsideration.

II. LEGAL ARGUMENT

A. Plaintiffs Did Not Prevail Against Defendants Warranting All Its Costs As A Matter of Right Under I.R.C.P. 54(d)(1).

Defendants are not arguing, disputing nor challenging the costs of $88.00 for the filing fee of the Complaint, $95.00 for the service fee to Defendant Hodge, $36.00 for the service fee to Defendant Source 1, $36.00 for the service fee to Defendant Source 2, $122.00 for the service fee of the subpoena duces tecum for Jade Welch, $20.00 witness fee for Jade Welch, $500 for reasonable costs of trial exhibits and depositions of Source 1, Source 2, Hodge and George Brown in the amounts of $788.40, $478.15, $675.25 and $671.60, respectively, as appropriate costs Plaintiffs are entitled to as a matter of right under Rule 54(d). However, these costs should be properly allocated to the individual Defendant upon which Plaintiffs prevailed against.

Defendants do, however, dispute the following Plaintiffs' claim for costs as a matter of right, specifically:

1) $200.00 filing for interstate subpoena duces tecum for Jesse Arp;

2) $90.40 service fee for George Brown;
3) $221.20 service fee for Christopher Claiborne;
4) $85.00 service fee of subpoena duces tecum upon Syringa Bank;
5) $85.00 service fee of subpoena duces tecum upon Michael Baldner;
6) $94.00 service fee of subpoena duces tecum upon Chris Halstead;
7) $545.00 service fee of subpoena duces tecum upon Jesse Arp;
8) $94.00 service fee of amended subpoena duces tecum upon Chris Halstead;
9) $90.40 service fee of subpoena duces tecum upon Bodybuilding.com;
10) $85.00 service of trial subpoena upon Neal Stuart;
11) $85.00 service fee of trial subpoena of Michael Baldner;
12) $85.00 service of trial subpoena upon Janae Young;
13) $36.00 service fee of trial subpoena upon George Brown;
14) $36.00 service fee of trial subpoena upon Blair Bews;
15) $50.00 service fee of amended trial subpoena upon George Brown; and
16) $105.00 service fee of amended trial subpoena upon Michael Baldner.

Rule 54(d)(1) of the Idaho Rules of Civil Procedure reads in pertinent parts as follows:

Rule 54(d)(1). Costs – Item Allowed.

(A) **Parties Entitled to Costs.** Except when otherwise limited by these rules, costs shall be allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.

(B) **Prevailing Party.** In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, **and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgment obtained.** (Emphasis added).

As noted above, Plaintiffs' Complaint alleged nineteen (19) causes of action which were reduced to ten (10) shortly before trial and ultimately prevailed on five (5) of their causes of action.

Although Plaintiffs filed suit against Defendants George Brown and Christopher Claiborne, the claims against them, personally, were dismissed with prejudice and Defendants Hodge, Source 1 or Source 2 should not be liable and responsible for the needless and

unnecessary expense Plaintiffs incurred for attempting to pursue claims against them individually. This entire lawsuit was a personal issue between Prehn and Hodge, not the other Defendants. The expense for serving these individual Defendants was unreasonable and did not serve any benefit to Plaintiffs' claims. Plaintiffs did not prevail against Defendants Hodge, Source 1 or Source 2 which warrant an award of these costs against either of these Defendants.

At the trial, Plaintiffs presented only three (3) witnesses: Don Prehn, Dwight Bandak and Jade Welch. Despite subpoenaing several other witnesses, Plaintiffs did not call any of the witnesses to testify at trial or by deposition in order to establish any claims. In light of the fact that none of these witnesses were called to testify, it would appear that none of these witnesses were necessary to prosecute their claims and therefore the costs incurred should not be awarded against Defendants Hodge, Source 1 or Source 2 as nothing was presented by them in support of their case in chief or in rebuttal.

Rule 54(d)(1)(B) provides this Court with the discretion to determine which party prevailed, whether in whole or in part, and to apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues an claims involved in the action and the resultant judgments obtained. Again, Defendants do not challenge those costs mentioned above allocated to each Defendant, specifically, as party to the lawsuit, however, it would be unfair and inequitable to award costs that provided no value to Plaintiffs' case or to the Court in rendering its ruling. The costs outlined above (1-16) were not reasonable and necessary expenses that Plaintiffs should have incurred. *See also* I.R.C.P 54(d)(1)(C).

I.R.C.P 54(d)(1)(C) states, in relevant part:

> Notwithstanding the determination that a particular party is entitled to costs as a matter of right under this subparagraph (C) in an action, the trial court in its sound

discretion may, upon proper objection, disallow any of the above described costs upon a finding that said costs were not reasonably incurred; were incurred for the purpose of harassment; were incurred in bad faith; or were incurred for the purpose of increasing the costs to any other party.

The Court has discretion in awarding costs as a matter of right and is not required to award such costs carte blanche, even if said cost may be specifically designated under the rule.

Therefore, Defendants respectfully request this Court deny Plaintiffs' request for said costs outlined above as costs as a matter of right or discretionary, except for those costs which Defendants do not challenge. In total, Defendants do not challenge $3,510.40 as costs as a matter of right which costs should allocated to the proper party.

B. Plaintiffs' discretionary costs were not necessary and exceptional costs reasonably incurred and should not in the interest of justice be assessed against Defendants.

I.R.C.P 54(d)(1)(D) states:

> **Discretionary Costs.** Additional items of cost not enumerated in, or in an amount in excess of that listed in subparagraph (C), may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary costs, the court may disallow on its own motion any such items of discretionary costs and make express findings supporting such disallowance.

Plaintiffs seek discretionary costs for the following categories: 1) westlaw online research; 2) discovery; 3) mediation; and 4) trial exhibits.

Plaintiffs request $646.44 as a discretionary cost for westlaw online research for issues concerning Application of Attorney Client Privilege between a corporation and its counsel, as well, as social media evidence. The legal issues Plaintiffs researched were not relevant nor at

issue in the case. The foregoing cost was not a necessary and exceptional cost reasonably incurred by Plaintiffs and therefore, should be denied by this Court.

Next, Plaintiffs request $1,661.04 for discovery issues including copying the server, scanning selected documents and having court reporter prepare exhibits. Throughout this case, Plaintiffs had alleged that Defendants Source 1 and Hodge did not cooperate in the discovery process and thus Plaintiffs had to expend substantial funds and time to retrieve the necessary documents Plaintiffs sought. Plaintiffs' contentions are without merit.

At the outset, Plaintiffs had a right to inspect the books at any time they desired by Idaho statute, the Operating Agreement (Art. 3, ¶ 3.2) and the Court's Order (¶ 7). Plaintiffs disingenuously represent that they limited the scope of their discovery requests. Rather, Plaintiffs discovery requested sought all documents generated by Source 1 since its inception. Plaintiffs request for documents was so voluminous that Source 1 offered Plaintiffs to inspect and determine what documents Plaintiffs were specifically seeking and relevant. Plaintiffs discovery requests were in essence seeking Source 1's counsel to discern what was important to Plaintiffs' case due to the overbroad requests propounded by Plaintiffs.

Based on the factual basis alleged in Plaintiffs' First Amended Complaint, it was clear that Plaintiffs had knowledge of factual issues that they perceived to be relevant to their claims. Rather than limiting their discovery requests in both time and substance, Plaintiffs sought every document generated by Source 1, hoping to find a smoking gun which never was discovered or presented at the trial, other than Prehn's hearsay testimony of Jesse Arp's alleged statements made to him by Hodge.

Plaintiffs copied Source 1's entire server which they acknowledged housed all of Source 1's financial records and emails.[3] In addition, Plaintiffs complain that counsel expended numerous hours inspecting "approximately 10 years' worth of unorganized and shoddily kept business records."[4] At trial, Prehn testified that he was the "inside guy," while Hodge was the "outside guy." As the "inside guy," Prehn testified which this Court accepted that he was intimately familiar with Source 1's business practices and records and managed and controlled such records during the time he was a working partner. Accordingly, the 10 years' worth of unorganized and shoddily kept business records was a result of Prehn's management and control, not Hodge.

Based on Prehn's testimony of his intimate knowledge of how Source 1 conducted business, the discovery in this case should have been fairly easy and precise in terms of the scope and documents Plaintiffs requested.

Furthermore, Prehn's intimate knowledge of Source 1's business records should have mitigated the time needed to find the necessary documents he was seeking. At one point, Plaintiffs moved to compel discovery against Source 1 for financial records contained in Profit Maker, but did not know how to retrieve the information. Profit Maker was the sole financial software program Source 1 used since 2006 that Prehn represented he was knowledgeable with. This Court denied Plaintiffs motion to compel against Source 1.

The discretionary cost of $1,661.04 to conduct discovery when Plaintiffs had access to Source 1's financial records at all times, was not a necessary and exceptional reasonably incurred by Plaintiffs and therefore, should be denied by this Court.

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3 *See* Footnote 4, Aff of Roe, p. 3.
4 *See id.*, p. 3.

Plaintiffs request $240.00 for mediation expense as a discretionary cost. It is a common practice for parties in litigation to engage in alternative dispute resolutions, such as mediation, to resolve issues short of trial. In this case, mediation was unsuccessful. Notwithstanding, the mediation cost was not a necessary and exceptional expense reasonably incurred by Plaintiffs and therefore, should be denied by this Court.

Finally, Plaintiffs request an additional $514.57 for exhibits, including demonstrative exhibits. The exhibits produced at trial were simply copies retrieved on Source 1's server and Plaintiffs are attempting seek in-house copy charges as a discretionary expense. These costs may have been necessary, but certainly were not exceptional and reasonably incurred by Plaintiffs, and therefore should be denied by this Court.

In all, Defendants respectfully request this Court to enter its Order denying Plaintiffs' discretionary costs in the amount of $3,062.05, in its entirety.

C. Defendants Did Not Defend This Lawsuit Frivolously, Unreasonably or Without Foundation.

Rule 54(e)(1) entitled attorney fees of the Idaho Rules of Civil Procedure states:

> In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract. Provided, attorney fees under section 12-121, Idaho Code, may be awarded by the court only when it finds, from the facts presented to it, that the case was brought, pursued or defended frivolously, unreasonably or without foundation; but attorney fees shall not be awarded pursuant to section 12-121, Idaho Code, on a default judgment.

See also, Idaho Code § 12-121.

In the instant case, Plaintiffs asserted nineteen (19) causes of action and prevailed on five (5) claims based on the Court's Findings of Fact and Conclusions of Law dated February 19, 2014.

Defendants presented testimony and documentary evidence refuting each and every cause of action asserted by Plaintiffs and in some instances prevailed on their evidence on certain claims. Although, the Court did not find all of Defendants evidence persuasive in refuting Plaintiffs claims, the case was not defended frivolously, unreasonably or without foundation.

Defendants produced evidence that certain actions and decisions made were in good faith and in reliance on information, opinions and statements made by professionals. To some extent, the Court disagreed, but simply because the Court disagreed with the evidence does not arise to the level that the case was defended frivolously, unreasonably or without foundation.

Simply because a Court disagrees with the application and interpretation of the evidence presented to the facts of a case does not render the pursuit or defense of such proposition frivolous, unreasonable or without foundation. Otherwise, in all cases the party who is on the other side of the Court's decision either brought, pursued or defended the case frivolously, unreasonably or without foundation and an award of attorney fees would be mandatory, contrary to I.R.C.P. 54(e)(1) and Idaho Code § 12-121 provides.

Notwithstanding, Defendants respectfully requests that this Court find that they did not bring, pursue or defend this lawsuit frivolously, unreasonably or without foundation.

D. Plaintiffs' Request For $250,583.77 in Attorney Fees Is Excessive And Unreasonable.

Plaintiffs seek an award of attorney fees pursuant to Idaho Code §§ 12-120(3) and 30-6-906(2), in addition to Idaho Code § 12-121 and Rule 54(e)(1) of the Idaho Rules of Civil Procedure. The latter premises are addressed above and will not be reiterated.

Notwithstanding, Idaho Code § 12-120(3) reads in pertinent part:

> In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the Court, to be taxed and collected as costs. The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. . .

Plaintiffs allege that they incurred attorneys' and paralegal fees in the amount of $250,583.77 in this case. It is represented that the firm of Moffatt, Thomas, Barrett, Rock & Fields expended a total of 1,532.60 hours for representing Prehn and Bandak, individually and on behalf of Source 1 in pursuing a derivative action. *See* Affidavit of Michael O. Roe.

Plaintiffs fail to allocate what time and fees were incurred for them, individually, in pursuing their claims against Defendants, versus the time and fees incurred for Source 1 in pursuing the derivative claims. Instead, Plaintiffs bundled the time and fees incurred into one lump total claiming Defendants, jointly and severally, are responsible regardless of apportionment and allocation to each Defendant for the claims pursued and prevailed against each Defendant.

Under Idaho Code § 12-120(3), the Court must determine that the gravamen of the case involves a "commercial transaction" and which party was the "prevailing party."

Plaintiffs cite *Johannsen v. Utterbeck,* 146 Idaho 423, 196 P.3d 341 (2008) for the general proposition that a lawsuit involving a dispute among members of a company formed for

commercial purposes constitutes a commercial transaction invoking Idaho Code § 12-120(3). However, Plaintiffs interpretation and application of Idaho Code § 12-120(3) in the instant case is misplaced.

In *Johannsen,* the lawsuit involved members asserting individual claims against the other in the dissolution of the company. *Johannsen* did not involve a derivative action, nor does the case hold that Idaho Code § 12-120(3) is applicable to a prevailing party in a derivative action on behalf of the company. Rather, the only controlling statute and authority for an award of attorney fees for a prevailing party in a derivative action is Idaho Code § 30-6-906(2). Defendants' arguments distinguishing the applicable statutory authority for award of attorney fees applicable in the instant case will be addressed below.

The second element requires a determination of the prevailing party and the Court's examination involves a three part inquiry: 1) the result obtained in relation to the relief sought; 2) whether there were multiple issues or claims; and 3) the extent to which either party prevailed on each issue and claim. *Joseph C.L.U. Ins. Assoc. v. Vaught,* 117 Idaho 555, 557 (App. 1990).

What constitutes a reasonable attorney fee is a discretionary determination for the trial court, to be guided by the criteria of I.R.C.P. 54(e)(3). *Sanders v. Lankford,* 134 Idaho 322, 326, 1 P.3d 823 (App.2000). "This amount may be more or less than the sum which the prevailing party is obligated to pay its attorney under their agreement." *See id.*

"A court is permitted to examine the reasonableness of the time and labor expended by the attorney under I.R.C.P. 54(e)(3)(A) and need not blindly accept the figures advanced by the attorney. . . An attorney cannot 'spend' his time extravagantly and expect to be compensated by the party who loses at trial." *Daisy Mfg. Co., Inc. v. Paintball Sports,* 134 Idaho 259, 263, 999

P.2d 914 (App.2000) (quoting *Craft Wall of Idaho, Inc. v. Stonebraker,* 108 Idaho 704, 706, 701 P.2d 324, 326 (Ct.App.1985)). "Hence, a court may disallow fees that were unnecessarily and unreasonably incurred or that were the product of attorney 'churning.'" *Id.*

It is not enough to provide an itemized billing statement, identify the timekeepers and their billings rates, and make the conclusory statement that the fees were necessarily and reasonably incurred. It is incumbent upon the party seeking attorney fees to provide the information necessary to enable the Court to evaluate the reasonableness and necessity of the fees being claimed. *Lettunich v. Lettunich,* 145 Idaho 746, 185 P.3d 258 (1008). The trial court need not blindly accept the figures advanced by the attorney and may disallow fees that were unnecessarily and unreasonably incurred. *Action Collection Services, Inc. v. Bigham,* 146 Idaho 286, 192 P.3d 1110 (Ct.App. 2008); *Craft Wall of Idaho v. Stonebraker,* 108 Idaho 704, 701 P.2d 324 (Ct.App. 1985).

I.R.C.P. 54(e)(3) sets forth criteria for which the Court must consider in determining what is a reasonable fee to be awarded. The factors include time and labor required; novelty and difficulty of the issues; skill and experience of counsel; prevailing charges for like work; whether fee is fixed or contingent; amount involved and results obtained; undesirability of case; awards in similar cases and several others.

In evaluating some the criteria outlined in I.R.C.P. 54(e)(3), Plaintiffs represent that counsel and its staff expended a total 1,532.60 to prosecute and prevail on five (5) of nineteen (19) claims alleged in its Second Amended Complaint. At the same time, Defendants counsel expended a total of 512.93 hours to defend all nineteen claims and prevailing on fourteen (14) of them in light of the Court's decision. The total hours expended by Defendants' counsel also

included the additional time for preparing for trial, twice, caused by Plaintiffs untimely disclosure of its damages. The representation that "Plaintiffs endeavored to act as efficiently as possible throughout the prosecution of this matter" is simply erroneous.[5] In light of the substantial difference in the numbers of hours expended, the Plaintiffs' hours are clearly exorbitant and a product of churning the bill. There numerous time entries for meetings between counsel and staff, as well as, numerous telephone conferences, e-mail correspondence and meetings the client. The time entries reflect that Prehn provided counsel with substantial information and documentation for the claims, which appears to contradict the statement that Plaintiffs limited the scope of discovery and Defendants thwarted their efforts in receiving the necessary documents and information.[6]

The case did not involve any novel or complex legal issues. The case was in every sense a "business divorce." Plaintiffs filed multiple claims as a derivative action for Source 1, primarily to ensure that Prehn received his loan amounts and back salary from Source 1. The derivative action did not serve to benefit all the members of Source 1 or protect Source 1's interest. Plaintiffs only called three (3) witnesses at trial, 2 of which offered little substance in Plaintiffs case. Plaintiffs' entire case revolved around Prehn's testimony which the Court obviously found persuasive and convincing.

Plaintiffs sought a total of $871,458.00 which was broke down as $477,195 for the derivative claims and $394,263 for Prehn's individual claims. The Court's decision awarded $250,495.49 and approximately $164,300, respectively.

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5 Aff. of Roe, ¶ 5, p. 2.

6 Counsel states that they had to sift through 650 gigabytes of data retrieved from the server which is equal to 48,750,000 pages of documents. *See* Aff. of Roe, ¶ 6, footnote 3, pp. 3-4.

As represented in the affidavit and time records, Prehn sought counsel well before the members contemplated and ultimately voted to dissolve the company. The time records show that Prehn was setting up this lawsuit against Hodge.

In the instant case, Defendants object to Plaintiffs assertion that they are the prevailing party in all aspects of the litigation and that the Court's decision entitles them to all of their attorney's fees under Idaho Code § 12-120(3), regardless of allocation.

In analyzing and determining the prevailing party under Idaho Code § 12-120(3), the Court must identify 1) who was the party which prevailed; 2) what was the result obtained in relation to the relief sought; 3) whether there were multiple claims or issues; and 4) the extent each party prevailed on each issue or claim.

As noted above, Plaintiffs filed nineteen (19) causes of action, both individually and derivatively on behalf of Source 1. Of those 19 claims, Prehn, individually, pursued eight (8) of the claims.[7] The remaining eleven (11) claims were pursued in a derivative action on behalf of Source 1.[8]

Prehn's Individual Claims Against Defendants Source 1 and Hodge.

Of Prehn's 8 causes of action against Source 1 and Hodge, Prehn prevailed on only one (1) of his 8 claims. The only claim Prehn prevailed on was Count 1 for Source 1's breach of his loan and back salary. The Court ruled that Hodge was jointly and severally liable for Prehn's loan and back salary which ruling is currently pending a Motion for Reconsideration on the issue. The Court's decision on the pending Motion has a significant effect on the party for which attorney fees, if any, is awarded against.

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7 Prehn's individual claims alleged in the Second amended Complaint were Counts 1, 5, 14, 15, 16, 17, 18, & 19.
8 Source 1's derivative claims were Counts 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 13.

Notwithstanding, Prehn sought damages in the amount of $394,263 specific to his individual claims. The Court's ruling awarded Prehn damages of $79,232 with interest at 10% from December 29, 2011 for his loan and $67,500 for his back salary. The total damage awarded to Prehn, individually, was $146,732, not including 10% interest on the loan. Even adding the 10% interest per annum on the loan to the total award, Prehn's total damages are approximately $164,300 or approximately 42% of the amount he sought in relief.

Based on a proper analysis under I.C. § 12-120(3) and proper reading of the *Johannsen* case cited by Plaintiffs, Prehn would only be entitled to award of his reasonable attorney fees, to the extent he is deemed the prevailing party for prevailing on one of his eight claims he asserted against Source 1 and Hodge, jointly and severally, contingent on the outcome of the pending Motion for Reconsideration.

However, in determining which party prevailed, the Court must also take into consideration the undisputed fact that Defendants Hodge and Source 1 were the prevailing parties on seven (7) of the claims asserted by Prehn, individually. As a result, Defendants Hodge and Source 1 should be provided an off-set to any time and fees Prehn, individually, incurred for prevailing on his one and only claim.

Prehn fails to apportion or allocate the time expended and attorney fees incurred for prosecuting and prevailing on the one issue he prevailed on. Prehn fails to provide the necessary information and explain to this Court the time and fees that was necessarily and reasonably incurred to prosecute his individual claims. Instead, Prehn provides the Court a lump sum of all the time and fees incurred regardless of whether or not he prevailed on the multiple claims he sought against Defendants Source 1 and Hodge. Prehn's Memorandum of Attorney Fees and

Costs is requesting this Court to blindly accept without any analysis or explanation of the amount of time that was allocated to his individual claims and the reasons why the amount of time allocated to his individual claims was necessary and reasonably incurred. The burden rests on the party seeking an award of attorney fees to provide the Court the information necessary in making a determination of an award of reasonable attorney fees to the extent the party prevailed on a claim in the case.

In reviewing the time records submitted by affidavit, it is nearly impossible to ascertain and determine how much time was expended to pursue and prosecute Prehn's individual claims. Based on the allegations concerning the loan and back salary represented in the Second Amended Complaint, the limited evidence presented at trial and the Court's findings of fact that it found Prehn's testimony credible and persuasive on the issue and Hodge's acknowledgement of the loan in his offer to buyout Prehn's membership in Source 1, the amount of time expended to pursue and prosecute this specific claim would not appear to be significant or substantial. However, without having the necessary information or direction to evaluate the time expended on the claim, what amount would constitute a reasonable attorney fee award for prevailing on this only issue out of the 8 asserted by Prehn individually is difficult to make a conclusion.

Notwithstanding, the Court's analysis for an award of reasonable attorney fees under Idaho Code § 12-120(3) should be limited to only Prehn and his individual claims to which he prevailed on. Any attorney fees incurred on behalf of Source 1 in the derivative action under Idaho Code § 12-120(3) is inappropriate and inapplicable for the reasons to be discussed below.

Fees Incurred in the Derivative Action filed on Behalf of Source 1.

Plaintiffs argue that according to the *Johannsen* decision, Prehn is entitled to an award of attorney fees under Idaho Code § 12-120(3) for pursuing a derivative action against Defendants. Plaintiffs' argument is without merit. *See McCann v. McCann,* 152 Idaho 809, 275 P.3d 824 (2012) (The case involved derivative action where the prevailing party (Defendants) did not seek an award of fees under I.C. § 12-120(3) despite being a commercial venture and decided four (4) years after the *Johannsen* decision.).

Idaho Code § 30-6-906 entitled "Proceeds and expenses" states:

(1) Except as otherwise provided in subsection (2) of this section:
   (a) Any proceeds or other benefits of a derivative action under section 30-6-902, Idaho Code, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff; and
   (b) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.
(2) **If a derivative action under section 30-6-902, Idaho Code, is successful in whole or in part, the district court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, <u>from the recovery of the limited liability company.</u> (Emphasis added).**

A reading and interpretation of the statutory language for an award of attorney fees and costs for successfully prevailing in a derivative action is derived **<u>only</u>** from the award recovered by the limited liability company. The plain language is not ambiguous and only one reasonable conclusion can be arrived at reading and interpreting the statutory language. Thus, based on the statute, an award of reasonable attorney fees for prevailing on the derivative action may only be recovered from the award received by Source 1 from Defendants Source 2 and Hodge.

As noted above, Plaintiffs pursued a derivative action against Defendants Hodge, Source 2 and others on behalf of Source 1 alleging eleven (11) causes of action. Based on the Court's ruling, Plaintiffs prevailed on four (4) of the eleven (11) derivative claims. Specifically, Counts

2 (Breach of Operating Agreement); 4 (Breach of Fiduciary Duty); 6 (Breach of Loan with Source 1); and 10 (Unjust Enrichment).

At the trial, Plaintiffs advocated and sought an award of damages against Defendants Source 2 and Hodge in the amount of $477,195.

The Court awarded damages in favor of Source 1 against Source 2 in the total amount of $38,687.83 and Hodge, personally, in the total amount of $211,807.66.[9] The total amount awarded to Source 1 was $250,495.49 or 52.5% of the amount Plaintiffs sought in relief.

Defendants Hodge and Source 2 do not dispute that Source 1 prevailed to some extent on those claims held in the Court's decision. However, it is undisputed based on the Court's decision that Plaintiffs' were not the prevailing party on seven (7) of the 11 claims asserted in the derivative action, but rather Defendant Hodge and Source 2 were, in fact, the prevailing parties on those claims. As a result, Defendants Hodge and Source 2 should be provided an off-set to any time and fees Source 1 derivatively, incurred for prevailing on its four claims.

It is anticipated that Plaintiffs will argue that some of the derivative claims were voluntarily dismissed with prejudice and thus, Defendants did not prevail on those claims. However, it was Plaintiffs who sought a stipulation to dismiss those claims with prejudice and the parties' stipulation and Order did not relieve Plaintiffs from a potential award of fees and costs against them or a factor to be considered by this Court in its analysis in determining the prevailing party and a reasonable award of attorney fees. *Straub v. Smith,* 145 Idaho 65, 175 P.3d 754 (2007) (Court held that the silence on the issue of costs and fees in a stipulation for

9 The Court found Hodge, jointly and severally liable for the damages assessed against Source 2. Some of the damages awarded by the Court is subject to the pending Motion for Reconsideration which may affect the Court's analysis.

dismissal does not constitute a waiver on the issue of costs and attorney fees to defendant for defending claim).

It should also be noted that Plaintiffs did not approach Defendants about dismissing their claims with prejudice until less than a month before the originally scheduled trial on April 1, 2013. Defendants had to prepare their defenses to said claims regardless of Plaintiffs late decision to dismiss the claims.

Similar to the arguments raised above concerning Prehn's lack of apportionment and allocation of time and fees expended between the various claims asserted and the Defendant for which the fee should be awarded against, the same arguments applies towards Plaintiffs request for an award of attorney fees in the derivative action.

In addition to the reasons and arguments set forth herein, Plaintiffs' request for attorney fees are excessive and unreasonable in that they seek an award of fees for preparing twice for the trial which was caused by Plaintiffs untimely disclosure of damages a week before trial. Due to untimely disclosure and failing to comply with the Idaho Rules of Civil Procedure, Plaintiffs seek to be rewarded for preparing twice for the case despite the cause and reason for vacating the trial was a result of Plaintiffs' unexcused conduct.

III. CONCLUSION

Based upon the foregoing arguments, statutory and case authority provided herein, Defendants respectfully request that the Court enter its Order granting in part, certain costs as a matter of right, denying in part certain costs as a matter of right advocated by Plaintiffs, deny all discretionary costs requested by Plaintiffs and deny an award of Plaintiffs' attorney fees under Idaho Code §§ 12-120(3), 12-121 and 30-6-906, I.R.C.P. 54(e) on the grounds that they were not

the prevailing party in all claims asserted, Defendants did not pursue its claims frivolously, unreasonably and without foundation, Plaintiffs' request is unreasonable, excessive, fails to apportion and allocate the time and amount expended for each claim asserted to which they prevailed and against whom the fee should be assessed.

In the alternative, Defendants respectfully request that if the Court is to enter its Order for an award of reasonable attorney fees pursuant to Idaho Code § 12-120(3) that the award only pertains to Prehn's individual claim to which he prevailed and any award of reasonable attorney fees in prevailing on the derivative claims are recovered only from the award received by Source 1 as stated under Idaho Code § 30-6-906.

DATED this 19th day of March, 2014.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
ED GUERRICABEITIA, of the firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of March, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
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101 S. Capitol Blvd., 10th Fl.
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✓ by U.S. Mail
_____ by Hand Delivery
_____ by Facsimile
_____ by Electronic Mail

Ed Guerricabeitia

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

JUDGMENT FOR DONNELLY PREHN

As to all claims for relief, except costs and fees which shall be determined and supplemented at a later date, asserted by Donnelly Prehn against Defendants, judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Donnelly Prehn recover:

(1) from The Source Store, LLC, an Idaho limited liability company, and Michael L. Hodge II, jointly and severally, the sum of $79,232.00, plus interest at the rate of 10% from December 29, 2011 to the date of final judgment, together with interest at the lawful rate until paid; and

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(2) from The Source Store, LLC and Michael L. Hodge II, jointly and severally, the sum of $67,500.00, together with interest at the lawful rate until paid.

DATED this 1 day of April, 2014.

By _____
The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of ~~March~~ Apr, 2014, I caused a true and correct copy of the foregoing **JUDGMENT FOR DONNELLY PREHN** to be served by the method indicated below, and addressed to the following:

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CHRISTOPHER D. RICH
INGA JOHNSON
Clerk of the Court

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **JUDGMENT FOR THE SOURCE STORE, LLC**

As to all claims for relief, except costs and fees which shall be determined and supplemented at a later date, asserted by Donnelly Prehn and Dwight Bandak to enforce the rights of The Source Store, LLC, an Idaho limited liability company, judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that The Source Store, LLC, recover as follows:

(1) from The Source, LLC, an Idaho limited liability company, and Michael L. Hodge II, jointly and severally, the sum of $38,687.83, together with interest at the lawful rate until paid; and

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(2) from Michael L. Hodge II the sum of $211,807.66, together with interest at the lawful rate until paid.

DATED this 1 day of April, 2014.

By _____
The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of ~~March~~ Apr, 2014, I caused a true and correct copy of the foregoing **JUDGMENT FOR THE SOURCE STORE, LLC** to be served by the method indicated below, and addressed to the following:

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Clerk of the Court

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION

COME NOW Defendant, Michael L. Hodge II (hereinafter "Hodge"), by and through his attorneys, Davison, Copple, Copple & Copple, and hereby submits his Memorandum in Opposition to Plaintiffs' Motion for Reconsideration.

Plaintiffs move for reconsideration contending that the evidence showed that Source 1 advanced payment of $20,000 for attorney fees to Hodge's counsel in defense of Hodge which amount should be repaid by Hodge to Source 1.

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Plaintiffs argue that the Court's Findings of Fact and Conclusions of Law entered on February 19, 2014 clearly demonstrate that Hodge was not entitled to exculpation provided for in the Operating Agreement. However, Plaintiffs' argument fails for two reasons:

First, Section 15.7 entitled "No Presumption" states:

> The termination of any Proceeding by a judgment, decree, order, injunction, settlement, compromise, award, conviction or upon a plea of *nolo contendere* (or its equivalent) shall not, by itself, create a presumption that (a) a Covered Person did not act in good faith; or (b) that the Covered Person acted in a manner which (i) was not in the Company's best interests, (ii) was not within the scope of the Covered Person's authority, or (iii) the Covered Person did not reasonably believe to be in the Company's best interests within the scope of the Covered Person's authority as provided in this Agreement.

Although, the Court's decision found that Hodge breached his fiduciary duty to Source 1 and its members by failing to minimize the company's expenses during the dissolution process and the manner the auction was held, the decision does not "clearly demonstrate" that Hodge did not act in good faith in resolving his duties in the dissolution process. The evidence was undisputed that Hodge relieved Source 1 of all general expenses such as rent, utilities, salaries of Mike Brown and Blair Bews and other administrative expenses by the end of July despite not having completed the existing purchase orders contemplated by the parties stipulated Order. The only employees that continued to be paid their salary by Source 1 were Hodge and the bookkeeper at the time until there was a final wind up report completed and filed with the Court.

Second, the Court's decision found Hodge liable on four (4) of the thirteen (13) causes of action asserted by Plaintiffs. Plaintiffs failed to meet their burden of proof that any of the subject funds was applied towards the claims Hodge was found liable. Plaintiffs elected to allege numerous causes against Hodge which the evidence did not support the allegations.

Section 15 of the Operating Agreement was intended to advance payments for litigation to members who did not initiate a lawsuit against the Company and its members. The application of this Section focuses on the totality of the lawsuit being asserted, not an individual claim or two that finds liability against the Covered Person.

Accordingly, Defendant Hodge respectfully requests that the Court enter its Order denying Plaintiffs' Motion for Reconsideration.

DATED this 22nd day of April, 2014.

DAVISON, COPPLE, COPPLE & COPPLE

Ed Guerricabeitia, of the firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of April, 2014, a true and correct copy of the foregoing was served upon the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

In Defendants' Memorandum in Support of Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law (the "Memorandum"), Hodge alleges and attempts to describe errors of fact and law in the Court's Findings of Fact and Conclusions of Law. Hodge asserts that (1) the Court should not have imposed personal liability for Prehn's loan upon Hodge; (2) the value the Court utilized to determine that Hodge was unjustly enriched

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by the Source 1 truck was incorrect; (3) Hodge should have received a credit against his personal loan because he assume the Source 1 truck loan; (4) the damages for unjust enrichment against Source 2 related to the ProfitMaker license constitute a double recovery; and (5) the Court should not have utilized the large BodyBuilding.com purchase order received in early April by Source 1 in calculating damages. For the reasons set forth below, Hodge fails to meet his burden or describe any error in the Court's findings. Accordingly, the Plaintiffs respectfully request that the Court deny Hodge's motion for reconsideration in its entirety.

II. ARGUMENT

A. Hodge is Personally Liable for Source 1's Obligations to Prehn.

Hodge challenges the Court's ruling that he is personally liable, jointly and severally, for Source 1's debts to Prehn. He relies upon a misconstruction of the evidence and the Court's Order RE: Dissolution of the Source Store, LLC and Related Matters (the "Order") to argue that Hodge was precluded, by such Order, from paying Source 1's debts. In so doing, Hodge fails to accurately characterize the evidence adduced at trial or the Order at issue. First, the Order did not preclude the payment of creditors. Repaying a loan, even to a member creditor such as Prehn, was ***not*** a distribution, as Hodge appears to suggest. Hodge offers no authority, under Idaho law or the Operating Agreement, to suggest that repayment of a creditor is or should be characterized as a distribution.

Furthermore, there is no dispute that, ***after the vote to dissolve*** and ***before entry of the Order*** upon which Hodge relies, Hodge refused to honor Prehn's loans or the agreement regarding Prehn's back salary (*see* Exh. 31), and equally important, proceeded to issue member distributions in the amount of $131,115. *See* Exh. 44. Again, Hodge's actions in this regard, over Prehn's demand for repayment and plainly stated objection to distributions, violated the

unambiguous terms of the Operating Agreement, which provides that, during dissolution, membership distributions occur ***after*** paying creditors and ***after*** paying investors with a positive capital account. *See* Exh. 1 at 23.

Hodge also states that the debts of a company are solely the debts of the company, and cannot be imposed upon Hodge based on his misconduct, citing Idaho Code Section 30-6-304. That statute does not provide grounds for reconsideration of the Court's findings and conclusions. Hodge's bald citation of the basic principles of limited individual liability, without argument or evaluation of the facts and circumstances of this case, ignores Hodge's disabling conduct under the Operating Agreement, breach of specific provisions of such Operating Agreement, and violation of the fiduciary duties associated with such Operating Agreement. Hodge ***directly*** injured Prehn thereby, ensuring Source 1 did not have the necessary funds to satisfy its debt to Prehn. In other words, by refusing to pay the debts of the company, Hodge was not merely a "manager acting as a manager," as required by subsection (b) of Section 30-6-304(1). Instead, he was acting for his own personal benefit and as the manager of a competing mirror-image company. Alternatively, even assuming *arguendo* Hodge's misconduct and the breach of his contractual and fiduciary duties was insufficient to create personal liability on Source 1's debts, Idaho Code Section 30-6-406(1) creates personal liability for Hodge on Source 1's debts to Prehn in the amount of, at a minimum, the $131.115 in improper distributions made in April after the vote to dissolve.

The Court did not err in attaching personal liability to Hodge for the Prehn's loan and back salary.

B. The Court Did Not Err in Its Valuation of the Truck.

Hodge argues that the Court erred by valuing Source 1's truck in accordance with its value as stated in Source 1's books and records. There is a reasonable basis in the record for the Court to conclude that Hodge was unjustly enriched in the amount of $16,893.05. While Hodge suggests a lesser value for the truck, he expressly acknowledges evidence in the record reflecting the value utilized by the Court. In light of any number of factors, including the reliability of Source 1's books, about which testimony at trial by persons with knowledge of such books was offered, as opposed to lay testimony and general assertions by Hodge related to the truck's depreciation (from which Source 1 received no benefit), the Court did not err in establishing the value of the Source 1 truck by using Source 1's books and records.

C. Hodge is Not Entitled to a Credit Against His Personal Loan.

Hodge also continues to argue that he should have received a credit against his personal loan from Source 1 because he assumed responsibility to pay off Source 1's truck loan. He argues that "Hodge and Source 1 swapped each other's debt," and therefore, Hodge is not obligated to pay back his personal loan from Source 1. The fact that this issue continues to be raised by Hodge is astounding. Nowhere in Hodge's discussion of his nonsensical accounting theory does Hodge ever even acknowledge that ***he received the actual Source 1 truck***. The truck was not the subject of the auction of Source 1 assets because it was no longer a Source 1 asset. It was no longer a Source 1 asset because Hodge obtained the truck and assumed responsibility for the truck loan. Hodge has never contended that the Source 1 truck was not, prior to dissolution, a Source 1 asset. As Hodge points out, the Source 1 truck is reflected as such in Source 1's books prior to dissolution. It does not make any sense that Hodge would personally keep the Source 1 truck in exchange for assuming the Source 1 truck loan, ***and also***

obtain forgiveness of his loan obligation to Source 1. The purported "debt swap" theory does not work when Hodge swapped a single Source 1 liability (the truck loan) for two Source 1 assets (the truck ***and*** the Hodge loan obligation).

One does not have to be an accountant to recognize that, while Hodge may view the facts and circumstances as demonstrating that "Hodge and Source 1 swapped each other's debt," the undisputed fact remains that Hodge ***also*** received the truck. The Court did not err. The proper amount Hodge owed on his personal loan was $20,084.61. He is not entitled to a credit toward such amount as a result of assuming the Source 1 truck loan because he received the asset securing such loan—the actual Source 1 truck.

D. There is Not a Double Recovery Related to ProfitMaker.

Hodge argues that the Court's findings result in a double recovery related to the ProfitMaker license because, notwithstanding findings to the contrary, Hodge maintains that such license was part and parcel of an auction lot and the damages comprising Hodge's auction misconduct necessarily account for the ProfitMaker license. Hodge begins his analysis with the bold and unsupported assertion that "[i]t was undisputed that the Profit Maker software program was part of Lot 3 in the auction." *See* Memorandum at 9. What is ***actually undisputed*** is that, at the time of the auction, Prehn ***understood*** that the Profit Maker software program was part of Lot 3 in the auction. The evidence presented at trial reflected that on April 17, 2012, Brown initiated the transfer of the ProfitMaker software to Source 2, and that by April 20, 2012, Hodge had completed the transfer. *See* Exhs. 46, 47, 48, 51, 52. Contrary to Hodge's assertion, therefore, such evidence certainly demonstrates that Brown's testimony that Source 2 did not receive the ProfitMaker license until June 2012 was not "undisputed." *See* Memorandum at 9.

The Court did not err in determining that Source 2 was unjustly enriched by the transfer of the ProfitMaker software prior to the auction.

As a result of the foregoing, Hodge's argument that the award against Source 2 and Hodge is a "double recovery" because the ProfitMaker software ***should have been*** included in Lot 3 is not compelling. First, evidence was presented, and the Court found, that the ProfitMaker software license had already been transferred to Source 2 by the time of the auction. Accordingly, when Prehn bid on Lot 3, Source 1 did not actually own the ProfitMaker software. Although Prehn did not have knowledge of this fact, it remains true that the ProfitMaker license is not part of the damages associated with Hodge's misconduct related to the molds. Hodge cannot maintain that, by virtue of a hypothetical claim or cause of action that may have accrued to Prehn against Source 1 or Hodge had Hodge not otherwise mishandled the auction, Hodge should be rewarded with a discount or offset against the actual damages sustained by the company.

Second, and related, the injury and the conduct precipitating the injury to Source 1 arising from the improper transfer is distinct from the misconduct and injury arising from the auction. As to the former, Source 1 was simply deprived of a valuable company asset without compensation by virtue of a simple conversion of the asset by Hodge to Source 2. As to the latter, Source 1 was deprived of cash to be paid for auction lots (of which one lot should have, but did not, include the ProfitMaker software, among numerous other assets) as a result of Hodge attempting to render certain molds entirely valueless by asserting arguable intellectual property rights. The injuries to Source 1 resulting from these two separate acts by Hodge were distinct injuries, notwithstanding the fact that, hypothetically, Prehn may have had a separate claim against Hodge if he had tended to Hodge for his bids.

Put simply, now that the Court has placed a value on a license Hodge simply converted at the outset, Hodge asks the Court to accordingly reduce the money he cost Source 1 as a result of his affirmative misconduct relating to the molds. In essence, Hodge asks the Court to speculate about what might have happened with respect to the ProfitMaker license Prehn mistakenly believed he had won in the auction if Hodge hadn't engaged in the bad faith auction conduct related to the molds and Prehn had proceeded to make payment for the lots he had won. Hodge asks the Court to hypothesize about whether Hodge would have appropriately returned the ProfitMaker license to Source 1 or engaged in further oppressive conduct. Hodge demands speculation and conjecture in order to obtain relief on reconsideration. The record, however, reflects no double recovery, and does not support reconsideration of the Court's ruling on the issue.

E. The Court Did Not Err by Including the BodyBuilding.com Purchase Order as a Source 1 Order to be Appropriately Processed by Source 1.

Hodge recites a number of either irrelevant or strained facts in support of his position that the Court erred by considering the BodyBuilding.com purchase order in its calculation of damages, but fails to actually address the Court's findings and conclusions. The Court concluded that "Bodybuilding.com placed this purchase order with Source 1 prior to the formation of Source 2, and prior to the filing of Source 1's dissolution notice." *See* Findings of Fact and Conclusions of Law at 19, ¶ 6. More importantly, the Court found that "[t]his purchase order came about through the efforts of Source 1." *Id.*

Hodge complains that in a meeting in April 2012 with Source 1's business counsel to discuss how to move forward relative to the dissolution (at which time the non-working members were unaware of the BodyBuilding.com order), counsel advised the

membership that upon the vote to dissolve, the company would not take on any new orders. Source 1's counsel's cited statement (which is not quoted in Hodge's brief), when viewed in the context of the meeting, did not state that Source 1 could not take any orders after the vote to dissolve. That Hodge may have viewed it as such a statement does not change the nature of the conversation the entire membership was having about various hypotheticals associated with winding up the company. Counsel's hypothetical assertion about purchase orders did not grant Hodge authority to convert to Source 2 a purchase order received as a result of the efforts of Source 1.

Hodge also complains that "the parties stipulated that Source 1 would process only the first quarter existing purchase orders which did not include Bodybuilding.com's P.O. despite the knowledge of all members" and that "the parties stipulation was memorialized by the Court's Order dated May 17, 2012." *See* Memorandum at 11. Reference to the Order reflects no such stipulation. The Order, negotiated on or about May 8, 2012 (well after Source 1 had received the purchase order from Bodybuilding.com), reflects an approximation of existing open purchase orders from Source 1 customers in various stages of processing, and identifies such open purchase orders as assets of Source 1. The Order did not exclude the existing BodyBuilding.com purchase order, nor did it grant Hodge authority to convert to Source 2 a purchase order received as a result of the efforts of Source 1.

The remaining assertions set forth in the numbered list are irrelevant to the matter at issue. For example, the fact that Hodge advised members at some time before May 8, 2012 that he was not taking new purchases does not matter. Source 1 received the purchase order at issue from BodyBuilding.com on April 9, 2012, not May 8, 2012. *See* Findings of Fact and Conclusions of Law at 11. The fact that Hodge and Prehn were released from their non-compete

agreements on May 18, 2012 is likewise irrelevant for the same reasons, as is Prehn's discussions with BodyBuilding.com[1] and the fact that Source 2 eventually received and processed the purchase order (all of which constitute facts not inconsistent with the Court's findings and conclusions). Finally, that Hodge had the power and authority of the membership was not the relevant question. The relevant question was whether he abused such power and authority by converting a Source 1 asset to Source 2, and the Court found that he did. The numbered assertions by Hodge do not constitute evidence that supports reconsideration of the Court's findings.

In sum, Hodge complains that, if he had processed the order at issue for Source 1 (interestingly, one of the largest in the history of the company), he would not have been "abiding and following" the unanimous vote to dissolve. Hodge conflates a vote to dissolve as of April 1, 2012 with a vote to allow the conversion to his new company of a very large purchase order received as a result of the efforts of Source 1. Hodge was not in a "precarious" position, nor did the liability associated with his capacity as a fiduciary of Source 1 "favor Plaintiffs only" any more than any fiduciary relationship. Hodge should have processed the purchase order received as a result of the efforts of Source 1 for Source 1's benefit, not for the benefit of Source 2.

The Plaintiffs respectfully request that the Court decline to reconsider its calculation of damages by removing the BodyBuilding.com purchase order from its calculation.

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[1] Prehn's discussions with BodyBuilding.com, upon review of the document cited by Hodge, is misrepresented by Hodge in the Memorandum as involving an attempt by Prehn to obtain BodyBuilding.com's business "which included the subject P.O." *See* Memorandum at 11. There is no reference to the "subject P.O." in Prehn's discussions with BodyBuilding.com. The "subject P.O." was placed with Source 1 on April 9, 2012. Even a cursory review of Prehn's contacts with BodyBuilding.com reflect a prospective proposal, as opposed to attempts to convert an order placed with Source 1 to Prehn individually.

The evidence presented by Hodge does not support such a recalculation, nor does it alter the Court's finding that "[t]his purchase order came about through the efforts of Source 1" and was therefore a Source 1 asset.

III. CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court deny Hodge's motion for reconsideration.

DATED this 22nd day of April, 2014.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2014, I caused a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** to be served by the method indicated below, and addressed to the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

PLAINTIFFS' OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS AND MOTION TO DISALLOW ATTORNEY FEES AND COSTS

COME NOW the Plaintiffs, by and through undersigned counsel, and respond to the Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs.

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I. INTRODUCTION

In a lawsuit tried to the Court in December 2013, the Plaintiffs successfully redeemed their rights as members and creditors of Source 1 by recovering from Hodge for his misconduct, as manager and liquidator of Source 1 and manager of Source 2, during the dissolution and winding up of Source 1. In the Defendants' Memorandum in Support of Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs (the "Objection"), counsel for Hodge argues that Hodge prevailed in part, that attorney fees must be paid by Source 1, and that counsel for the Plaintiffs pursued the case inefficiently. With the exception of the costs of serving Brown and Claiborne ($90.40 and $221.20, respectively), which the Plaintiffs concede should not have been included as costs chargeable to Hodge, the Plaintiffs maintain that they prevailed in the action, that counsel tried the case efficiently, and that Hodge should be deemed liable for the costs and fees associated with the action.

II. ARGUMENT

Hodge objects to an award of attorney fees on the grounds that he prevailed in part. He also argues that attorney fees must be taken from Source 1's recovery, failing to recognize that his own concession that this case did not present a true derivative action militates against such an outcome. Finally, Hodge argues unconvincingly that the extent of Plaintiffs' counsel's efforts were unnecessary and unreasonable. Each such contention is addressed in detail in the following brief.

A. Attorney Fees Should be Taxed as Costs Against Hodge.

Hodge's approach in defending against an award of attorney fees to the Plaintiffs is characterized by ignoring what this action was about and parsing the individual claims. First, Hodge argues that the gravamen of this case is not a commercial transaction. The argument completely ignores the fact that the case was about Hodge's compliance with his obligations under the Operating Agreement, a contract governing, among other things, dissolution of Source 1. Second, he attempts to suggest that this action is actually two actions—a direct action by Prehn alone and a derivative action—to which counsel for the Plaintiffs must separately allocate its fees. While this case did indeed involve multiple claims, it constituted only one action. Third, Hodge unsuccessfully attempts to quantify and establish some measure of success utilizing a simplified and questionable evaluation of the metrics of Idaho Code Section 12-120(3) and Rule 54. Such metrics, however, weigh in favor of the Plaintiffs upon engaging in a more comprehensive evaluation.

1. The gravamen of this action is a commercial transaction.

Hodge appears to contend that because this case involved certain claims pleaded directly ***and*** derivatively, a commercial transaction is not the gravamen of the action. *See* Objection at 15. To support his position, he cites *Johannsen v. Utterbeck*, 146 Idaho 423 (2008), in which the Court upheld a determination that the gravamen of the case was a commercial transaction because the dispute was over the members' respective obligations under the company's operating agreement. He cites *Johannsen* as distinguishable from this case because there was no derivative claims in *Johannsen*, but ignores the clearly articulated proposition in that case that a lawsuit addressed to a business dispute over obligations under a company's

operating agreement qualifies as a commercial transaction, constituting the gravamen of the lawsuit. Whether certain claims were pleaded as derivative claims does not change the fact that Hodge's obligations under the Operating Agreement constituted the gravamen of the action for recovery, therefore triggering application of Idaho Code Section 12-120(3) and allowing the prevailing party's fees to be taxed as costs. Other than citing to and discussing a separate statutory provision allowing for the recovery of attorney fees, *see* I.C. § 30-6-906, Hodge offers no authority for the proposition that a commercial transaction is not the gravamen of this lawsuit.

2. The case was a single action, not two separate actions.

Hodge contends that the Court heard evidence in two separate actions in December 2013—an individual action pursued by Prehn and a derivative action pursued by the Plaintiffs on behalf of Source 1. *See* Objection at 18. Thus, Hodge argues, counsel was required to separately identify its work on each such action, and separately seek costs and fees related thereto. Hodge's position in this regard is unsupported and unreasonable. This case was a ***single action***. The gravamen of this single action was a commercial transaction governed by Source 1's Operating Agreement—the dissolution of Source 1. Under the Operating Agreement, Hodge was required to pay creditors, including member creditors such as Prehn, before making distributions to the membership. Under the Operating Agreement, Hodge was required to act reasonably in maximizing return to members as a result of the dissolution, both in winding up operation of the business and auctioning assets. Under the Operating Agreement, Hodge was a fiduciary and was required to treat the ***entire*** membership fairly during the dissolution process. Hodge's breach of his contractual and fiduciary duties is what this single action is about, whether one characterizes any given claim as direct or derivative. Hodge cannot dispute that. Hodge

concedes that this was a "business divorce," and was largely a dispute over dissolution as between Prehn and Hodge, who spent the better part of a decade building the business together. Hodge offers no authority for the proposition that the Court should treat this case, or the evaluation of the attorney fee obligations, as two separate actions, for which counsel for the Plaintiffs must separately parcel its efforts.

Hodge's rationale for attempting to parcel the case as he has is clear, and it is reflected in his absolute failure to acknowledge that Hodge, as the ***only*** true bad actor in this case, is jointly and severally liable for all of the damages awarded to the Plaintiffs in this case. According to Hodge, however, he should not be obligated for any of the attorney fees in this case. As to the purportedly separate action on Prehn's loan and back salary, Hodge appears to contend that, notwithstanding the fact that his misconduct ultimately gave rise to the claim and that he is jointly and severally liable therefor, Source 1 (which is almost dissolved and insolvent except for its judgment against Hodge) should be held responsible, if at all, for the costs and fees associated with the action. Similarly, as to the purportedly separate derivative action, Hodge cites Idaho Code Section 30-6-906 for the proposition that the award, if any, of the Plaintiffs' fees must come from Source 1's recovery.

To the extent the Court is persuaded that it must account for two separate actions and elects to parcel the award of fees accordingly, the Plaintiffs request that the Court exercise its discretion and, as to Prehn's purportedly separate action, Hodge be deemed jointly and severally liable for the fees to be taxed as costs, just as he is for the damages already set forth in the Judgment for Donnelly Prehn. Likewise, with respect to the purportedly separate "derivative" action, for the reasons set forth in greater detail in Section B *infra*, the Plaintiffs

respectfully request that Hodge be deemed liable for the fees taxed as costs, or at a minimum, that Hodge be deemed jointly and severally liable to the Plaintiffs for the award of fees associated with the derivative action.

3. The Plaintiffs prevailed in the action.

In addition to the argument that this case is actually two separate actions, Hodge emphasizes that there were, at one point, nineteen separate claims asserted by the Plaintiffs. He conducts a shallow evaluation of the factors to determine a prevailing party under Section 12-120(3), focusing on the fact that several claims were not expressly addressed by the Court in its Findings of Fact and Conclusions of Law and that several other claims were voluntarily dismissed. The evaluation ignores, however, that none of the ***issues*** that embodied the substance of the action were abandoned, and that the only significant ***issue*** the Court did not ultimately resolve in the Plaintiffs' favor was the issue of whether Prehn was entitled to recover future lost profits (although the Plaintiffs succeeded in proving that Hodge's auction conduct was inappropriate).

"In a multiple-claim action, the trial court is vested with discretion to determine which party prevailed overall, and may apportion costs and fees, taking into account the disposition of all claims, counterclaims or other multiple issues." *Holmes v. Holmes*, 125 Idaho 784, 788 (Ct. App. 1994). As Hodge notes, the prevailing party inquiry involves an analysis of the result compared to the relief sought, whether there were multiple issues or claims, and the extent to which either party prevailed on each issue and claim. *See* Objection at 15 (citing *Joseph C.L.U. Ins. Assoc. v. Vaught*, 117 Idaho 555, 557 (Ct. App. 1990)).

Hodge repeatedly suggests that the claims voluntarily dismissed or ultimately unaddressed by the Court in its Findings of Fact and Conclusions of Law, or that the Plaintiffs recovery of approximately $400,000.00 instead of approximately $800,000.00, should simply be deemed to be a victory for Hodge. His position does not find support in Idaho law. In *Decker v. Homeguard Systems*, 105 Idaho 158 (Ct. App. 1983), for example, a plaintiff pleaded 28 counts, of which all but six were either dismissed or taken from the jury upon motion by the defendant, and succeeded in recovering only 3% of the recovery sought, yet the district court found plaintiff the prevailing party. *Id.* at 160-61 In exercising its discretion, upheld by the Court of Appeals, the district court found the plaintiff's conduct in pleading numerous alternative claims prudent and in accordance with the liberalized civil rules, and as to the comparatively small recovery, found that the jury nevertheless awarded damages against the defendants "relative to the basic and principal complaints." *Id.*

A similar analysis applies in this case. The misconduct of Hodge that formed the basis of all of the nineteen claims was addressed by the Court, and damages were awarded based on such misconduct. The amount recovered by the Plaintiffs from the defendants, the entirety of which Hodge was deemed liable to pay, is far more than a nominal amount, and "the victory was not pyrrhic." *See Oakes v. Boise Hart Clinic Physicians*, 152 Idaho 540, 546 (2012) (where plaintiff sought $25,171.69 for breach of an employment contract, and recovered $2,043.92, claimant was the prevailing party, and district court abused its discretion in declining to find claimant to be the prevailing party). As set forth below, the Plaintiffs' broad pleading and subsequent efforts to narrow the specific legal claims to be tried (as opposed to issues and instances of misconduct) and therefor simplify the case prior to trial were appropriate, and in no

way constituted a victory for Hodge. The counting of claims dismissed or not expressly addressed is simply an inadequate measure of success in this case.

a. The unaddressed claims do not demonstrate that Hodge prevailed.

Hodge asserts that the Court "did not find liability nor award damages" for breach of the non-compete agreement, breach of the covenant of good faith and fair dealing, tortious interference with contract, constructive trust, and injunctive relief. *See* Objection at 5. Hodge appears to then contend that these facts demonstrate that he prevailed in part.

First, the claims for constructive trust and injunctive relief were equitable claims, which did not seek to impose liability for damages. It is obvious that the constructive trust claim was an alternative claim, and was not pursued in conjunction with the claims for damages in light of the fact that, should the evidence have demanded it, the ultimate relief would be a finding that Source 2 held Source 1 in constructive trust, negating much of the dissolution-related misconduct for which Hodge was liable and providing the opportunity for the Source 1 membership to again attempt dissolution. Similarly, the injunctive relief sought was equitable relief, seeking the appointment of a new liquidator to avoid further abuse of the liquidator position by Hodge. Because the wind-up was largely completed prior to trial, and the award of damages remedies Hodge's misconduct, the request for injunctive relief was in some respects rendered less critical. However, in light of the Court's Findings of Fact and Conclusions of Law, which states that "[i]t may be appropriate or necessary to appoint a receiver to complete the winding up and dissolution of Source 1," the question of whether Hodge prevailed in defending against the injunctive relief Plaintiffs sought is at best ambiguous.

Second, with respect to the tortious interference with contract claim and the claim for breach of the non-compete agreement, the Court made no findings. The Court did, however, award damages related to the conduct that formed the basis of such claims when it found that Hodge breached his fiduciary duty by converting the BodyBuilding.com purchase order placed with Source 1 to Source 2. *See* Findings of Fact and Conclusions of Law at 19, ¶ 6. In other words, had the Court made findings with respect to the interference and non-compete claims, whether favorable or unfavorable, the resulting recovery for the Plaintiffs would have been no different. The injury associated with the tortious interference and non-compete claims was redressed by the Court in favor of the Plaintiffs. The absence of explicit findings relating to the elements of such specific claims is a hollow and meaningless "victory" for Hodge.

Third, in light of the Court's conclusion that Hodge breached the Operating Agreement, a similar analysis applies to whether Hodge actually succeeded in defending the breach of the covenant of good faith and fair dealing claim asserted by the Plaintiffs. While the Court did not specifically recite the elements of a claim for breach of the covenant of good faith and fair dealing, it did find that he breached the Operating Agreement in several respects, and failed to act in good faith for the benefit of the membership, for example, when he mishandled the auction. Idaho law "implies a covenant of good faith and fair dealing when doing so is consistent with the express terms of an agreement." *Bank of Commerce v. Jefferson Enterprises*, 154 Idaho 824, 831 (2013) (quoting *Noak v. Idaho Dep't of Correction*, 152 Idaho 305, 309 (2012)). "When it is implied, '[t]he covenant requires that the parties perform, in good faith, the obligations imposed by their agreement." *Id.* Such a claim may be maintained by a party to the contract when he or she "is denied the right to the benefits of the agreement [the parties] entered

into." *Id.* Although a conclusion of law reciting breach of the covenant of good faith and fair dealing is not stated, the Findings of Fact and Conclusions of Law reflect that the Plaintiffs showed Hodge did not act in good faith and that they were denied the benefit of the Operating Agreement during dissolution. The issues, and Hodge's liability for injury, were resolved in the Plaintiffs' favor. The absence of a clear articulation by the Court does not necessarily show successful defense of the claim, and certainly does not suggest that Hodge even partially prevailed in the action.

In sum, that certain claims tried to the Court in December were unaddressed does not demonstrate that Hodge prevailed in part. The instances of alleged misconduct tried to the Court, and the duplicative injury arising therefrom, were resolved favorably for the Plaintiffs.

b. The dismissed claims do not demonstrate Hodge prevailed.

At the close of discovery and depositions, the Plaintiffs voluntarily dismissed numerous claims. While it is certainly true that the voluntary dismissal of certain of the Plaintiffs' claims by stipulation of the parties prior to trial did not constitute a waiver of a right to claim attorney fees by Hodge, contrary to his assertion at page 3 of the Objection that he "prevailed on these causes of action," it is also well-established that the "mere dismissal of a claim without a trial does not necessarily mean that the party against whom the claim was made is a prevailing party" in the action. *See Chenery v. Agri-Lines Corp.*, 106 Idaho 687, 691, 682 P.2d 640, 644 (Ct. App. 1984).

The Plaintiffs dismissed the following claims: violation of the Idaho Trade Secrets Act, violation of the Lanham Act, common law trademark infringement, breach of warranties, unconscionable auction contract, fraud, promissory estoppel, equitable estoppel, and

declaratory relief. As the Second Amended Complaint makes clear, such claims were directed at two broad issues: (1) Hodge's use of Source 1's goodwill to convert Source 1 business opportunities for the sole benefit of Source 2, his newly formed mirror-image company; and (2) Hodge's auction-related misconduct.

As with the unaddressed claims, the issue of Hodge's use of Source 1's goodwill, trade secrets, and business information, including the Source 1 mark, to gain an advantage for Source 2 and convert Source 1's business opportunities immediately after the vote to dissolve remained an issue in the case, and was tried before the Court. However, after Hodge purchased Source 1's intellectual property rights at the auction, the damages associated with such issue were effectively limited in scope to a very short period of time, and ultimately the evidence reflected only the damages associated with the converted BodyBuilding.com purchase order. In other words, had the Plaintiffs invested the time and money necessary to successfully show the elements of the various intellectual property-related claims, the resulting recovery for injury to the Plaintiffs would have been no different than the recovery obtained as a result of the Court's conclusion that Hodge breached his fiduciary duty by converting BodyBuilding.com's April purchase order with Source 1. The ***issue*** was resolved in favor of the Plaintiffs (and the Plaintiffs achieved a level of efficiency—an issue about which Hodge complains in addressing the Plaintiffs' time spent on the case), notwithstanding the Plaintiffs' dismissal of certain claims ultimately rendered duplicative, which claims were nonetheless pleaded in good faith.

Similarly, each of the remaining claims were pursued by Prehn and related to Hodge's misconduct during the auction of Source 1 assets, and the damages caused to Prehn.

Each such claim was voluntarily dismissed at the close of discovery,[1] although the issue of auction misconduct was still tried to the Court. The Court found that Hodge breached his duty to the membership of Source 1 in its Findings of Fact and Conclusions of Law and awarded damages based on the reduced aggregate asset purchase price obtained by Source 1, but concluded that Prehn could not recover future lost profits as a result of Hodge's proven misconduct. As with the dismissed trademark claims, the dismissed auction-related claims simply offered recovery duplicative of recovery the Plaintiffs sought in prosecuting the claims that were tried before the Court.

In sum, the conduct, and more importantly, the potential recoverable damages resulting from the above-described claims afforded the Plaintiffs nothing more than a double recovery for the same conduct and injury at issue in the claims that were actually tried to the Court in December. As counsel for Hodge and the Court are aware, a claimant is not entitled to recover twice for the same injury. Accordingly, the claims were dismissed largely in order to simplify the case for purposes of trial. Hodge was not subject to greater liability before the dismissal, and likewise was not relieved of any accountability for his misconduct as a result of the dismissal. While certain legal ***claims*** were voluntarily dismissed, Hodge's ***exposure*** to liability and the requisite defense for his affirmative misconduct remained the same, and the

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[1] Hodge attempts to suggest that the Plaintiffs delayed in voluntarily dismissing the claims that they did prior to trial. It should be noted, however, that such claims were dismissed almost immediately after the Plaintiffs deposed Source 1, Source 2, Hodge and Brown and discovery closed. As the Court is aware, written discovery was fraught with problems and delay, and even after written discovery closed, Plaintiffs endeavored at every turn to cooperate in setting depositions at a convenient time for Hodge and Brown, with all parties agreeing to extend the deadline to complete their depositions until mid-February in light of Hodge's and Brown's respective travel and business schedules.

action largely resolved favorably for the Plaintiffs. The dismissal of claims does not demonstrate that Hodge prevailed in part.

B. The Award of Attorney Fees Should Not Be Taken from Source 1's Recovery.

While on the one hand acknowledging that the Plaintiffs did not pursue a true derivative action, Hodge on the other hand contends that the Plaintiffs must receive any award of attorney fees related to the purportedly separate "derivative action" from the existing recovery of Source 1, citing Idaho Code Section 30-6-906. Hodge owed a duty, under both the Operating Agreement and Idaho law, to Source 1 ***and*** each member of Source 1. The Plaintiffs pursued their respective rights directly (even as to claims Hodge characterizes as part of the "derivative action"), and as appropriate depending on the circumstances, ***also*** pursued Source 1's rights derivatively, and the Complaint makes that very clear. *See e.g.* Second Amended Complaint at ¶¶ 75, 93, 130 (each alleging injury to Prehn, Bandak ***and*** Source 1). Even Hodge admits that "[t]he derivative action did not serve to benefit all the members of Source 1 or protect Source 1's interests." *See* Objection at 17.

As Hodge acknowledges, the reason Hodge's breach of the Operating Agreement does not ultimately constitute a derivative action that benefits all the members of Source 1 is because of the financial status of Source 1 as of the final accounting, well after the initiation of the lawsuit. If prior to the lawsuit or prior to trial, Source 1 had closed its final accounting with funds sufficient to satisfy creditors such as Prehn and pay off the positive capital accounts of Bandak and Claiborne, the action against Hodge would truly be a derivative action. The injury would be one suffered by Source 1. Source 1's entire membership would have been harmed by Hodge's misconduct, and would benefit from the post-dissolution distribution of any recovery

related to such misconduct, a result that may have demanded recoupment from the entire membership of expenses incurred by those persons willing to redeem the company's rights. Instead, because Source 1 did not have such funds to pay creditors and capital accounts, Prehn and Bandak (along with Claiborne) were uniquely harmed by Hodge's misconduct.[2] In other words, the Plaintiffs appropriately pursued their claims as both direct ***and*** derivative claims, recognizing that a dissolution and wind-up that had not yet been completed determined whether

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[2] The fact this case was pursued while Source 1 was winding up and dissolving adds a level of complexity to the evaluation of whether this case was truly a "derivative action." Prehn had and successfully proved an agreement with Source 1 related to repayment of his loan and back salary. The agreement was separate from, but contemplated by, the Operating Agreement, making Prehn a member creditor with a direct action against the company, and, depending upon the circumstances, Hodge. The dissolution triggered an obligation by Source 1 and Hodge, as manager and liquidator, to pay Prehn's loan and back salary prior to making any Source 1 member distribution. Prehn therefore had, and maintained, a direct action against Hodge for his affirmative misconduct during dissolution because as a creditor, he suffered "harm to himself distinct from that suffered" by other Source 1 members. *See McCann v. McCann*, 152 Idaho 809, 815-16 (2012) (quoting *Schumacher v. Schumacher*, 469 N.W.2d 793, 798 (N.D. 1991)).

Bandak's role and status as a direct or derivative plaintiff is slightly different. But for the dissolution, Bandak had no independent contractual or other expectation related to his investment in the company and positive capital account. In other words, but for the dissolution, Bandak had no direct action against Source 1 or Hodge. Upon dissolution under the Operating Agreement, however, Source 1 and Hodge, as manager and liquidator, were obligated to repay positive capital accounts to the extent assets remained ***after*** paying creditors and ***prior to*** making distributions of any liquidated remainder of Source 1 assets. Bandak therefore had, and maintained, a direct action against Hodge for his affirmative misconduct during dissolution, because as one of two investors with a positive capital account (the other is Claiborne), he "suffered harm to himself distinct from that suffered" by other Source 1 members.

To the extent Hodge's misconduct had caused Source 1 harm quantified as in excess of Source 1's obligations to Prehn, Bandak and Claiborne, the action would truly be derivative. Accordingly, if obligations to Prehn, Bandak and Claiborne had been discharged prior to or as a result of the recovery, and a recovery against Hodge remained for the benefit of Source 1, it might have been appropriate to award the attorney fees, or some portion thereof, from Source 1's recovery. That is not what has occurred here. Fees are more appropriately awarded to the Plaintiffs from Hodge under I.C. § 12-120(3) because the Plaintiffs have succeeded in pursuing and recovering on their individual claims against Hodge.

they could prove an "actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company." I.C. § 30-6-901(2). Source 1 is largely dissolved, and by virtue of the plain language in the Operating Agreement, Source 1's entire membership was not actually damaged by Hodge's misconduct during dissolution ***unless and until the Plaintiffs achieved a recovery in excess of Source 1's dissolution-related obligations on Prehn's loan and back salary, and the positive capital accounts of Bandak and Claiborne.*** *See* n. 2 *supra.*

Awarding attorney fees for the Plaintiffs' successful prosecution of this case against Hodge out of Source 1's recovery serves only to discourage a minority LLC member whose rights are being ignored or affirmatively harmed by a manager or liquidator during dissolution from seeking to protect such member's rights. Such a determination by the Court would actually embolden a bad actor such as Hodge because not only has he deprived the Plaintiffs of their rights during the dissolution by his affirmative misconduct, but he will have ensured that any recovery in accordance with the Plaintiffs' individual rights is diminished by the expenses and fees the Plaintiffs incurred to protect such individual rights. Put simply, awarding attorney fees from Source 1's recovery in this action, which as Hodge acknowledges cannot be characterized as a true "derivative" action under the circumstances, would reward Hodge for his misconduct and punish the Plaintiffs for seeking to redeem their entitlements upon dissolution.

The Court "***may*** award the [Plaintiffs] reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company" pursuant Idaho Code Section 30-6-906. Under the circumstances, however, in light of the fact that this case is not a true derivative action wherein the Plaintiffs have achieved a recovery for the benefit of the

entire Source 1 membership, the Plaintiffs urge the Court to enter an award of the Plaintiffs' reasonable attorney fees against Hodge. Hodge is personally liable for all of the relief ordered by the Court, and there is no dispute that Hodge was the sole bad actor in this case, in both his capacity as manager and liquidator of Source 1 and manager of Source 2. Because the Plaintiffs are the prevailing parties in the action, which action's gravamen was a commercial transaction (the dissolution of Source 1 pursuant to the Operating Agreement), the Court should enter an order taxing the Plaintiffs' reasonable attorney fees as costs pursuant to Section 12-120(3). All of such costs should be taxed against Hodge, who is personally liable for all of the damages awarded in this case. Such costs should not be taxed against Source 1's recovery.

Even in the event the Court finds it appropriate to tax any or all of the award of attorney fees against Source 1 pursuant to Idaho Code Section 30-6-906, as Hodge's counsel suggests, the Plaintiffs respectfully request that the Court ***also*** hold Hodge to be jointly and severally liable for such attorney fees, pursuant to Section 12-120(3), just as he is for the damages awarded in the judgments entered. Hodge offers no reasonable argument that Section 30-6-906 provides the exclusive statutory authority for an award of attorney fees in this case.

C. Hodge's Attacks on Counsel's Efficiency are Not Compelling.

In addition to Hodge's dubious claim that he partially prevailed in this case and that the responsibility for fees must be allocated in some proportion to Source 1, Hodge also argues that the extent of the effort of the Plaintiffs' counsel in this case was unnecessary and unreasonable. *See* Objection at 15-17. Counsel for Hodge and Source 2 notes the difference in hours spent to try the case as between himself and counsel for the Plaintiffs, apparently contending that his level of preparation of the case and for trial should have likewise been

sufficient for Plaintiffs' counsel. However, in light of the fact the Plaintiffs were, as such, required by rule to move the case forward, the Plaintiffs' counsel could not employ Hodge and Source 2's "delay, wait, and see" litigation strategy. Counsel's strategy in defense of Hodge and Source 2 cannot form the baseline for the Plaintiffs' strategy and preparation of their case. In fact, perhaps if counsel for Hodge and Source 2 had reviewed in any detail the evidence he and Source 1 provided to the Plaintiffs in protracted written discovery and/or had he deposed Mr. Prehn, who he certainly understood was the Plaintiffs' key witness, the potential damages set forth on the illustrative exhibits that formed the basis for Hodge's objection prior to trial (which illustrative exhibits simply set forth information included in discovery timely provided to all parties by Source 1, Source 2 and Hodge) would not have been such a surprise.

Counsel also attacks Plaintiffs' counsel's efficiency, going so far as to make the accusation that it was "churning the bill." *See* Objection at 17. Such a bold and unsubstantiated accusation deserves no response, especially since the primary grounds for such accusation are numerous telephone conferences and meetings with the client. In this case, the client also happened to be the cooperative person most familiar with the business of Source 1, the Plaintiffs' star witness, and the lynchpin of the case. Counsel for the Plaintiffs utilized an associate attorney and a paralegal, each with lower rates, to conduct legal research and discovery, and perform other necessary tasks whenever appropriate. The Plaintiffs did not file unnecessary motions, did not hire an expert (even to respond to the Defendants' untimely expert), elected to abandon expensive efforts to obtain the testimony of a critical witness—Jesse Arp—in light of Mr. Arp's lack of cooperation in the lawsuit, limited depositions to only the most critical witnesses for the Defendants, elected not to depose the Defendants' expert, voluntarily dismissed

claims and defendants as appropriate as discovery closed, and, as Hodge's counsel notes, utilized whenever possible the knowledge of Mr. Prehn to prepare the case.

Counsel for the Plaintiffs did not "churn the bill." In light of the foregoing efforts to save on expenses, one cannot even support the characterization that the Plaintiffs over-prepared the case. Moreover, it could be said that the proof of the preparation necessary to successfully try this case is in the proverbial pudding, represented in the Court's ultimate determination. That Hodge and Source 2 made the decision to reactively defend Hodge's ongoing misconduct on a smaller litigation budget, without success, does not logically lead to the conclusion that the Plaintiffs were inefficient in their preparation and successful prosecution of the case, as counsel for Hodge suggests. Nor does it support the defamatory contention that counsel for the Plaintiffs "churned the bill."

III. CONCLUSION

For the foregoing reasons, and for the reasons articulated in Plaintiffs' Memorandum of Costs and Attorney Fees, the Plaintiffs respectfully request an award of costs as a matter of right to the Plaintiffs against the Defendants, jointly and severally, in the amount of $5,507.40, less the service fees for Brown and Claiborne in the amounts of $90.40 and $221.20, discretionary costs of $3,062.05, and attorney fees taxed as costs in the amount of $250,014.32, for a total of $258.272.17. Such award ***should not*** reduce the award of damages to Source 1.

DATED this 22nd day of April, 2014.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2014, I caused a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS AND MOTION TO DISALLOW ATTORNEY FEES AND COSTS** to be served by the method indicated below, and addressed to the following:

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Attorneys for Defendants
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' REPLY MEMORANDUM TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR RECONSIDERATION OF COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

COME NOW Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), by and through their attorneys, Davison, Copple, Copple & Copple, and hereby submit their Reply Memorandum to Plaintiffs' Response on the Motion for Reconsideration.

I. ARGUMENT

A. Hodge is not jointly and severally liable for Source 1's obligation to Prehn.

Plaintiffs argue that Hodge misconstrues the Court's Order entered on May 17, 2012 in that the Order did not preclude the payment of creditors. Plaintiffs mischaracterize the intent of the Order and specifically paragraph 5 therein, suggesting that the subject paragraph had no force of law or effect in this matter. Hodge does not dispute that the subject Order did not preclude payment to creditors. However, the dispute concerning Source 1's obligations to Prehn revolved on the amounts that were owed. The Court's Findings of Fact and Conclusions of Law acknowledged that fact, "[W]hile Hodge disputes that these amounts are owed, the Court found Prehn's testimony credible and persuasive."[1]

The fact that the amounts were unknown and disputed was clearly the understanding and the intent for paragraph 5 of the Order and more specifically, the last sentence incorporated therein:

> In addition, 2011 profits in the amount of $65,000.00 may be distributed to all Members of Source 1, **but no other distributions, including profits from processing of the Open Purchase Orders, shall be made until the litigation is complete, the parties all agree or as otherwise ordered by the Court.** (Emphasis added).

The Order which the parties negotiated and agreed on precluded Hodge from distributing funds to Prehn because the parties were not in agreement on the amounts, so until the Court ruled on the issue, only then did the Order permit Hodge to distribute funds in the Dissolution Account that were not otherwise "bona fide and legitimate costs and expenses of Source 1 arising from the Dissolution."

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[1] Findings of Fact and Conclusions of Law dated February 19, 2014, Findings of Fact, ¶ 5, p. 3.

Plaintiffs next argue that the 2011 distributions made after the vote to dissolve and before the entry of the Order should be the basis for why Hodge is personally liable for Source 1's obligations to Prehn under Idaho Code §30-6-406(1). Again, this argument fails based on the uncontradicted evidence at trial.

The evidence at trial unequivocally supported that ALL members, including Prehn and Bandak, authorized and ratified those 2011 distributions. *See* Idaho Code § 30-6-409(6). The Court's Order specifically authorized the remaining balance of the 2011 profits could be distributed to the members. This term was negotiated and stipulated to by the parties.

Furthermore, Prehn admitted that he knowingly accepted his distributions, if the distributions were improper, which would have subjected him to personal liability. *See* Idaho Code § 30-6-406(3).

As stated in the Motion for Reconsideration, Hodge does not dispute that Source 1 owed obligations to Prehn or the amounts the Court reached, the issue sought for reconsideration is the direct conflict between the Operating Agreement upon which the Court relied in reaching its conclusion with the Court's Order which was negotiated, accepted and agreed on by all the Members after the lawsuit, but before the auction, which modifies and/or amends the Operating Agreement on the issue.

Defendant Hodge respectfully requests the Court grant reconsideration on the subject issue and correct the judgment removing Hodge, jointly and severally liable on Source 1's obligations to Prehn.

B. The valuation of the truck was in error.

The evidence at trial from both sides was the value of the truck at the time of dissolution was approximately $21,000 to $22,000. The evidence in the record showed that the vehicle had a market value of $22,663 according to Edmunds.com Private Party Sale and $21,459 according to Kelly Blue Book Private Party Sale.[2] Plaintiffs corroborate this fact.[3]

The Court found that the value of the vehicle was $36,654.37 based on Source 1's Balance Sheet for April, 2012.[4] The Court also found that Source 1's debt owing on the vehicle was $19,761.22.[5]

The Court's reliance on the number reflected in Source 1's April balance sheet for the vehicle is misplaced and erroneous for the purpose of concluding the value of the vehicle in April, 2012. The number reflected on the balance sheet is the exact same on Source 1's balance sheets for December 2011 through June 2012.[6] The number designated on the balance sheets was not a reflection of the value of the vehicle, but reflected the original loan amount Source 1 secured to purchase the vehicle in 2008. The designated number never changed on the "Asset" side of the balance sheet ledger, but did on the "Liability" side reflecting the reduction of the loan amount.[7]

The 2008 loan amount of $36,654.27 secured by Source 1 for the truck is not substantial and competent evidence to support the value of the truck in April of 2012. It is without dispute

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[2] TR. Ex. 1055 which was stipulated by the parties in the Stipulation to the Parties' Trial Exhibits filed with the Court on November 27, 2013.
[3] *See* Plaintiffs' Closing Argument, pp. 12-13. ("In making his calculation, Hodge appears to have purposefully failed to consider the fact that he was taking ownership of a truck with a value of approximately $20,000.").
[4] *See id.,* Findings of Fact, ¶ 28, p. 11. *See also,* Conclusions of Law, ¶ 11, p. 20.
[5] *See id.*
[6] TR. Ex. 1009.
[7] TR. Ex. 1009 (April 2012 Balance Sheet). The Liability section on the ledger reflects the remaining loan amount owing on the vehicle as of April 2012 was $19,761.22.

that the truck was a depreciable asset and its value in 2008 would have been less than in 2012 which the evidence in the record supported. *See* TR. Ex. 1055.

Defendant Hodge respectfully requests that the Court correct and reduce its award of damages of $16,893.05 for unjust enrichment in favor of Source 1 based on the evidence reflecting the value of truck as of April 2012..

C. Hodge is entitled to a credit against his personal loan to Source 1.

Plaintiffs continue to misconstrue the issue with regards to the credit owed on the personal loan. The Court found that Hodge was unjustly enriched in the amount of the equity of the truck. It was the equity of the truck which Source 1 did not receive in the exchange of the debts which was at issue and the relevant matter. Plaintiffs' argument that Hodge received the actual truck and thus has a physical asset is irrelevant once the Court found that Hodge owed Source 1 the equity on the truck.

The loan on the vehicle was a legitimate liability and debt owed by Source 1 which would have required Source 1 to repay any balance owing to the financial institution carrying the loan. Hodge personally assumed Source 1's debt on the vehicle which relieved Source 1 from its legal obligation in exchange for relieving him of his debt to the company. This was the consideration.

Source 1 received a benefit from Hodge for personally assuming its debt which should have been credited against his loan balance owed to Source 1. Otherwise, the Court's ruling would essentially penalize Hodge approximately $40,000 which would include the repayment of his loan in full plus personally assuming Source 1's debt for no consideration.

Defendant Hodge respectfully requests that the Court correct and reduce its award of damages of $20,084.61 in favor of Source 1 for Hodge's personal loan.

D. Source 1 received a double recovery for the ProfitMaker.

It is remarkable that Plaintiffs overlook and frankly ignore the facts and evidence that unequivocally shows that the ProfitMaker software **was not transferred before the auction on May 18, 2012.** It is disingenuous argument to make that Prehn thought that the software program was part of the auction, to later discover it was already transferred before the auction when Prehn, personally, received the email from ASI Computer Systems on June 1, 2012 acknowledging a dispute between who retained the ProfitMaker license. *See* Aff. of Brown, Ex. A.

If the ProfitMaker license had already been transferred prior to the auction as the Court found, ASI Computer Systems would have never sent the email reflected in Exhibit A because what dispute would there have been if the license was already in Source 2's name.

Contrary to Plaintiffs assertion the injuries to Source 1 resulting from two separate acts were distinct injuries, Source 1 owned only one ProfitMaker software program.

The Court reached the $8,000 damages from Prehn's testimony that he paid that amount for the software in 2006. However, Prehn, by admission, valued all of the assets in Lot 3 which included the ProfitMaker software at $15,100 and awarded Source 1 the difference between what it could have received if Prehn tendered his funds versus what it actually received based on Hodge's paid bid amounts. Source 1 was made whole with the award of $60,300 for auction shortfall, thus awarding an additional $8,000 for the same asset against Source 2 does amount to a double recovery.

Therefore, Source 2 respectfully requests that the Court correct and vacate its award of damages of $8,000 for the Profit Maker software license in favor of Source 1 or, in the alternative, Defendant Hodge respectfully requests that the Court correct and reduce its award of damages of $60,300 by $8,000 for the auction shortfall in favor of Source 1.

E. The Bodybuilding.com Purchase Order Should Not have been Included in Lost Profits.

Plaintiffs argue that Hodge fails to address the Court's conclusion that the Bodybuilding.com P.O. was placed before Source 2 was formed and before Source 1 filed its dissolution notice. These conclusions are not relevant to the issue of whether Hodge breached his fiduciary duty to Source 1 by converting the April 9, 2012 purchase order.

The primary fact that was not considered was the unanimous Members vote to dissolve Source effective April 1, 2012 and which time the company no longer existed to take on new purchase orders. Plaintiffs ignore this fact for obvious reasons.

Plaintiffs contend that they were unaware of the Bodybuilding.com Order in April of 2012. This is inaccurate statement. Plaintiffs Amended Complaint filed April 27, 2012 references the Bodybuilding.com P.O. under their theory of tortious interference with contract.[8] Plaintiffs were obviously aware that Source 1 did not accept the purchase order based on the several instances Hodge advised them. The Court's ruling did not find Defendants liable for this theory because there was no contract between Bodybuilding.com and Source 1 when the purchase order was simply placed to be breached.

Plaintiffs argue that the Order did not exclude the Bodybuilding.com purchase order. This statement also is inaccurate based on Prehn's own testimony at trial. Prehn admitted that

[8] *See* First Amended Complaint, p. 23, ¶¶ 123 and 124.

the existing P.O.'s reflected in the Order consisted of only the first quarter P.O.'s which quarter ended on March 31, 2012. The hearing which the parties negotiated and stipulated to those purchase orders was May 8, 2012, after the lawsuit was filed and Plaintiffs had actual knowledge. Plaintiffs made no attempt and conceded that Hodge would process only the first quarter purchase orders which Plaintiffs knew did not include the Bodybuilding.com purchase order submitted on April 9, 2012.

The Court's decision does provide the basis, law or theory upon which it concluded that Hodge beached his fiduciary duty to Source 1 by supposedly converting the Bodybuilding.com purchase order to Source 2 who did not receive the order until June of 2012.

The evidence in the record does not support the conclusion of law reached by the Court.

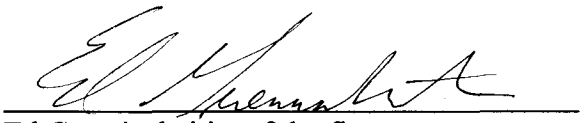
Defendant Hodge respectfully requests that the Court correct and recalculate its award of damages of $114,530 for lost profits in favor of Source 1 by removing the Bodybuilding.com P.O. in its calculation.

VII. Conclusion

Based upon the foregoing arguments, the Defendants respectfully request this Court to enter its Order granting Defendants' Motion for Reconsideration and correct its Findings of Fact and Conclusions of Law and the judgments filed thereafter, accordingly.

DATED this 25th day of April, 2014.

DAVISON, COPPLE, COPPLE & COPPLE



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of April, 2014, a true and correct copy of the foregoing was served upon the following:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN AND DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

DEFENDANTS' RESPONSE MEMORANDUM TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' OBJECTION TO PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS AND MOTION TO DISALLOW ATTORNEY FEES AND COSTS

COME NOW the Defendants, Michael L. Hodge II (hereinafter "Hodge"), The Source Store, LLC (hereinafter "Source 1") and The Source, LLC (hereinafter "Source 2"), by and through their attorneys of record, Davison, Copple, Copple & Copple, and hereby submit their response to Plaintiffs' Opposition to Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs.

I. INTRODUCTION

Plaintiffs argue that no distinction existed between the derivative claims and the direct action in so far as Hodge was found jointly and severally liable for all damages, therefore it was one single action. As a result, Plaintiffs contend they were not required to separate and allocate their fees or costs to the particular prevailing party and the claims upon which they prevailed, but instead could lump sum all of the fees and costs incurred. Plaintiffs claim that Idaho Code §12-120(3) is the proper basis for an award of all of the fees incurred, whether the fees incurred were related to the derivative action or direct action.

However, Plaintiffs argument fails under the claims and relief sought in the complaint, the Findings of Fact and Conclusions of Law entered on February 19, 2004 and the Uniform Limited Liability Act.

As further explained below, the Uniform Limited Liability Act clearly distinguishes a direct action and a derivative action and provides the exclusive basis for an award of attorneys and costs in a derivative action.

II. LEGAL ARGUMENT

A. The lawsuit involved two separate actions, not one single action.

Plaintiffs' argument that subject lawsuit was not two actions – a direct action by Prehn for his loan and back salary and a derivative action on behalf of Source 1 – but instead one action asserted by Prehn and Bandak for damages they individually suffered during the dissolution defies logic and ignores the Court's decision and the statutory authority in Idaho. Plaintiffs contend that although two separate actions were involved, the actions were tried together in one proceeding thus should be treated as a single action.

Plaintiffs argue that Hodge offered no authority for the proposition that the Court should treat this case as two separate actions. This is an inaccurate statement. Idaho's statutory authority supports Defendants' argument that the case involved two distinct and separate actions. Plaintiffs attempt to imply that the damages found by the Court on behalf of Source 1 are in essence damages suffered by Prehn and Bandak, individually, lacks merit and is unfounded for several reasons: 1) Plaintiffs ignores the manner in which they pled their claims in the complaint; 2) Plaintiffs want the Court to now disregard its decision that Plaintiffs adequately pled and maintained derivative claims on behalf of Source 1[1]; and 3) Plaintiffs' argument is directly contrary to Idaho Code §§ 30-6-901, 30-6-902, 30-6-904 and 30-6-906.

Plaintiffs assertion that Hodge's opinion that the subject lawsuit was not a true derivative claim is somehow a concession and binding to the argument that the Court should not treat the case as two separate actions in allocating attorneys and costs awarded, if any, to the appropriate Defendant is unfounded under the law and ignores the facts and circumstances in this case.

Prior to the first set trial, Defendants moved for dismissal of the derivative claims asserted by Plaintiffs, arguing that the claims were truly individual in nature under the disguise of a derivative action. Plaintiffs responded to the motion arguing that the claims were, in fact, derivative, and the motion should be denied. This Court denied Defendants' motion for dismissal and found that Plaintiffs could maintain the derivative action on behalf of Source 1. The Court's decision concluded that Source 1 suffered damages. Now Plaintiffs attempt to argue that the derivative action asserted was really an individual action, in combination with a derivative action, and the damages found by the Court really belong to them, not Source 1.

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1 Findings of Fact and Conclusions of Law entered on February 19, 2014, p. 20, ¶ 10.

Defendants are unaware of any case authority that holds the proposition that a party's opinion in a lawsuit trumps the Court's ruling and decision.

Plaintiffs Second Amended Complaint speaks for itself and unequivocally seeks relief on behalf of Source 1, not Plaintiffs individually, other than Prehn's claim for his loan and back salary. Plaintiffs derivative claims alleged that demand on Hodge for Source 1 to bring an action would have been futile which is a prerequisite to initiate a derivative action. *See* Idaho Code § 30-6-904.

Plaintiffs' argument seeks this Court to disregard Idaho statutes on the issue.

Idaho Code § 30-6-901 entitled "Direct action by member" states:

(1) Subject to subsection (2) of this section, a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.
(2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company. (Emphasis added).

Idaho Code § 30-6-902 entitled "Derivative action" states:

A member may maintain a derivative action to enforce a right of the limited liability company if:
(1) The member first makes demand on the other member in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or
(2) A demand under subsection (1) of this section would be futile. (Emphasis added).

The Court found that Plaintiffs met the standard to assert the derivative claims and awarded Source 1 damages in the amount of $250,495.49.[2] Accordingly, Idaho Code § 30-6-906 controls and it states:

> (1) Except as otherwise provided in subsection (2) of this section:
> (a) **Any proceeds or other benefits of a derivative action under section 30-6-902, Idaho Code, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff;** and
> (b) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company. (Emphasis added).
>
> (2) If a derivative action under section 30-6-902, Idaho Code, is successful in whole or in part, the district court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

Rule 54(d)(1)(B) of the Idaho Rules of Civil Procedure states in relevant part: "[T]he trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained."

In this case, there were three (3) defendants and three (3) plaintiffs. Each Defendant was found liable for damages to a specific plaintiff and judgment was entered accordingly. The Court's decision found and judgments were entered as follows:

1) Defendant Source 1 liable to only Plaintiff Prehn for his loan and back salary. Defendant Hodge was found to be jointly and severally liable;[3]

---

2 Source 1 was awarded damages from both Source 2 and Hodge.
3 The issue of Hodge's personal liability to the damages assessed against Source 1 to Prehn is pending a motion for reconsideration.

2) Defendant Source 2 liable to only Plaintiff Source 1. Defendant Hodge was found jointly and severally liable; and

3) Defendant Hodge liable to only Source 1.

To the extent that each Plaintiff prevailed on some of the issues and claims involved in the action, the Court has a duty to apportion reasonable costs and attorney fees for which the claims or issues the specific Plaintiff prevailed upon against the specific Defendant. *See Schroeder v. Partin,* 151 Idaho 471, 259 P.3d 617 (2011), *Brooks v. Gigray Ranches,* 128 Idaho 72, 910 P.2d 744 (1996) and *Willie v. Board of Trustees,* 138 Idaho 131, 59 P.3d 302 (2002).

Based on Plaintiffs' Complaint, the Court's ruling and above mentioned Idaho statutes, two distinct and separate actions were involved and therefore, according to I.R.C.P. 54(d)(1)(B), the Court should apportion those costs and fees in a fair and equitable manner after considering all of the issues and claims involved in the action and the judgment entered thereto to each prevailing party against the specific Defendant.

B. Attorney Fees derived from the derivative claim are subject only to Idaho Code § 30-6-906(2)

Plaintiffs argue that Idaho Code § 12-120(3) controls the Court's decision for an award of attorney fees for both Prehn's direct action against Source 1 and the derivative action on behalf of Source 1. Plaintiffs have failed to cite a single case in Idaho upon which a Court has awarded a party attorney fees under Idaho Code § 12-120(3) in a derivative action. Plaintiffs' argument fails under Idaho law.

Attorney fees are awardable only where they are authorized by statute or contract. *Heller v. Cenarussa,* 106 Idaho 571, 682 P.2d 524 (1984). If a party bases its claim for an award of

attorney fees by contract, the party must identify the provision of the contract which authorizes such an award for attorney fees. *Bream v. Benscoter,* 139 Idaho 364, 79 P.3d 723 (2003).

In the instant case, Plaintiffs cite to no provision under the Operating Agreement authorizing an award of attorney fees to them, thus an award of attorney fees must come from statute.

Idaho law has long held the proposition that "[W]here two statutes deal with the same subject matter, the more specific will prevail." *State v. Wilson,* 107 Idaho 506, 508, 690 P.2d 1338, 1340 (1984). The more specific statute controls. *See Shay v. Cesler,* 132 Idaho 585, 588, 977 P.2d 199, 202 (1999).

The Idaho Uniform Limited Liability Company Act applies and governs derivative actions filed by members on behalf of the limited liability company. Specifically therein, Idaho Code § 30-6-906(2) provides the statutory authority for a plaintiff to seek an award of attorney fees incurred in a derivative action. Idaho Code § 30-6-906(2) states that an award of attorney fees are recoverable from the damages awarded to the limited liability company. Plaintiffs have offered no case authority that refutes this proposition or argument that challenges the clear, plain and unambiguous language set forth in the statute. When the language is unambiguous, there is no need for the Court to apply statutory rules of construction to ascertain the intent.

Secondly, Plaintiffs have failed to allocate those attorney fees that were reasonably incurred to prosecute the few claims out of many upon which Source 1 prevailed. Instead, Plaintiffs request this Court to blindly accept the exorbitant and excessive attorney fees charged without further information and explanation to enable this Court to evaluate the reasonableness and necessity of the fees claimed. It is not enough to provide an itemized billing statement,

identify the timekeepers and their billings rates, and make the conclusory statement that the fees were necessarily and reasonably incurred. It is incumbent upon the party seeking attorney fees to provide the information necessary to enable the Court to evaluate the reasonableness and necessity of the fees being claimed. *Lettunich v. Lettunich,* 145 Idaho 746, 185 P.3d 258 (1008).

To the extent that Prehn is entitled to an award of attorney fees under Idaho Code § 12-120(3), this provision applies only to Prehn's direct action claim against Source 1 for his loan and back salary which Defendants do not dispute is permitted by *Johannsen v. Utterbeck,* 146 Idaho 423, 196 P.3d 341 (2008) cited by Plaintiffs in their Memorandum of Attorney Fees and Costs. However, again, Plaintiffs have failed to allocate those reasonable attorney fees necessarily incurred to prosecute his only direct claim to which he prevailed upon.

It is not the Court's obligation or duty to scroll though the invoices to determine what fees were reasonable and incurred to prosecute this specific claim. That burden lies on the Plaintiffs which they have neglected to provide and allocate for the Court to assess and determine.

Accordingly, to the extent the Court is inclined to award attorney fees incurred in the derivative action, Idaho Code § 30-6-906(2) controls and such fees and costs must be obtained through the award granted to Source 1.

In addition, to the extent the Court awards attorney fees under Idaho Code § 12-120(3), the award must pertain to only those reasonable attorney fees necessarily incurred for prosecuting the loan and back salary claim.

C. <u>Defendants did prevail on several claims alleged by Plaintiffs, individually and derivatively.</u>

Plaintiffs argue that Hodge did not prevail on any of the claims asserted in the Second Amended Complaint. Plaintiffs allege that the dismissal of nine (9) claims prior to trial was simply their effort to simplify the case and would have afforded Plaintiffs nothing more than a double recovery in the claims that were actually tried in the case.

Additionally, Plaintiffs contend that the lack of express findings in the Court's decision on those issues which were tried is "a hollow and meaningless 'victory' for Hodge." *See* Plaintiffs' Opposition, p. 9.

I.R.C.P. 54(d)(1)(B) requires the Court to consider apportionment of the costs and fees in a fair and equitable manner after considering all the issues and claims involved in the action and the judgments obtained. After consideration of foregoing, the Court in its sound discretion may apportion the cost and fees accordingly.

Without being redundant, Defendants request the Court consider the factual basis and arguments set forth in their Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs for determining whether apportionment is appropriate in this matter.

III. CONCLUSION

As to the arguments raised by Plaintiffs regarding the Costs incurred and the reasonableness of Plaintiffs' request for attorney fees in the amount of $250,014.32, Defendants re-submit their arguments set forth in their Objection and Motion to Disallow Attorney Fees and Costs.

Notwithstanding, Defendants request that if the Court is to enter its Order for an award of reasonable attorney fees pursuant to Idaho Code § 12-120(3) that the award only pertains to

Prehn's individual claim to which he prevailed and any award of reasonable attorney fees in prevailing on the derivative claims are recovered only from the award received by Source 1 as stated under Idaho Code § 30-6-906(2).

In addition, Defendants respectfully request the Court enter its Order for an award of costs as outlined in their Objection and Motion to Disallow Attorney Fees and Costs.

DATED this 25th day of April, 2014.

DAVISON, COPPLE, COPPLE & COPPLE, LLP

By: _____
ED GUERRICABEITIA, of the firm
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of April, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe
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_____ by U.S. Mail
_____ by Hand Delivery
__✓__ by Facsimile
_____ by Electronic Mail

_____
Ed Guerricabeitia

Orig/ DMG 11/28/14 JK

NO. _____ FILED A.M. _____ P.M. 4:37

APR 25 2014

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION

I. INTRODUCTION

In response to the Plaintiffs' Motion for Reconsideration related to Hodge authorizing Source 1 to pay for his individual attorney, Hodge does not dispute or refute the evidence that demonstrates Source 1 paid $20,000 for his individual defense, which is the very ruling about which the Plaintiffs seek reconsideration. *See* Plaintiffs Motion for Reconsideration

ORIGINAL

at 2 (quoting Findings of Fact and Conclusions of Law at 20). Instead, Hodge takes the position that he was entitled to receive such Source 1 funds for his defense and, implicitly, that he is entitled to exculpation. Such argument, even if accepted by the Court, does not address Hodge's breach of the Operating Agreement related to the very act of issuing payment from Source 1 to his personal attorney in May 2012. Furthermore, the implicit contention that Hodge is entitled to exculpation is without merit, in light of the fact the Court determined that Hodge breached the Operating Agreement in numerous respects, and equally important, breached his fiduciary duties to Source 1 and its membership.

II. ARGUMENT

A. Hodge Fails to Address His Breach of the Operating Agreement.

By simply arguing that Hodge was entitled to exculpation and payment of $20,000 of his personal legal fees by Source 1 for defense of misconduct that harmed Source 1, Hodge fails to address the first reason the Court should award an additional $20,000 in damages to the Plaintiffs. Hodge failed to deliver to Source 1 an undertaking or promise to pay Source 1 back if it was ultimately determined that Hodge was not entitled to exculpation. The Operating Agreement provides:

> Costs and expenses actually and reasonably incurred by a Covered Person in any Proceeding shall be paid by the Company in advance of final disposition of the Proceeding ***upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to exculpation under Section 15.2 hereof and indemnification under Section 15.3 hereof.***

Exhibit 1, Operating Agreement of The Source Store, LLC at 25, § 15.5.

In accordance with the plain and unambiguous terms of the Operating Agreement, as a ***condition precedent*** to Source 1's obligation to pay Hodge's costs and expenses, Hodge was

required to deliver to Source 1 an undertaking. Hodge was also required to deliver a notice to the membership of his demand for exculpation. *See* Operating Agreement at 25, § 15.6 ("Any Covered Person may tender the defense of any Proceeding or make demand for exculpation or indemnification under this Article 15 ***by providing Notice in accordance with this Agreement to the Manager and the Members***.").

Hodge provides no evidence that he delivered notice to the membership of a demand for exculpation or delivered a promise or undertaking to Source 1 for advance expenses. The evidence reflects that Hodge simply paid his personal attorney $20,000.00 from Source 1's account. In other words, even if the Court agreed with Hodge's contention that he is entitled to exculpation related to this lawsuit (which it should not), Hodge still breached the Operating Agreement when, as manager of Source 1, he authorized payment of his own individual litigation expenses without obtaining, for Source 1's benefit, an undertaking to repay such expenses if he was found not to have deserved exculpation. Hodge's authorization of payment issued for his defense without compliance with the foregoing requirements of Source 1's Operating Agreement constituted a breach thereof, ***regardless*** of whether Hodge was or is entitled to exculpation, causing damage to Source 1 and its membership in the amount of $20,000.00.

B. Hodge is Not Entitled To Exculpation and Indemnification.

Even if Hodge had appropriately notified membership of his demand for exculpation and indemnification and executed an undertaking to Source 1, he would be obligated to make repayment of such obligation as a result of the Court's Findings of Fact and Conclusions of Law and the Judgments entered in this case. This case is about Hodge's breach of his contractual and fiduciary duties to Source 1 in his capacity as manager and liquidator. The Court found Hodge liable for all of the damages awarded in this case in such capacity. Hodge did not

prevail in the action such that he would be entitled to exculpation. Focusing on the "totality of the lawsuit being asserted," as Hodge suggests in his Response, demonstrates as much.

III. CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court reconsider its determination that there was no evidence that $20,000.00 in Hodge's legal fees were actually paid by Source 1, and accordingly, request entry of an order and judgment finding Hodge liable for an additional $20,000.00 in damages to Source 1.

DATED this 25 day of April, 2014.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Matthew J. McGee – Of the Firm
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of April, 2014, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION** to be served by the method indicated below, and addressed to the following:

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Matthew J. McGee

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV-OC-2012-07728

MEMORANDUM DECISION AND ORDER RE: PLAINTIFFS' MEMORANDUM OF ATTORNEY FEES AND COSTS

Following the Court trial of this action, the Court entered Findings and Conclusions on February 19, 2014. On April 1, 2014, the Court entered Judgments in favor of Donnelly Prehn and the Source Store, LLC. On March 5, 2014, Plaintiffs filed a Memorandum of Attorney Fees and Costs with an affidavit of counsel. Defendants filed objections on March 19, 2014, along with an affidavit of counsel. On April 22, 2014, Plaintiff's filed an opposition. Defendants filed a response on April 25, 2014.

This matter was argued to the Court on April 29, 2014. Matthew J. McGee, Moffatt, Thomas, Barrett, Rock & Fields, Chtd., appeared and argued for the Plaintiffs. Ed Guerricabeitia,

Davison, Copple, Copple & Copple, LLP, appeared and argued for the Defendants. The Court took the matter under advisement.

Standards

A prevailing party generally is entitled to an award of costs. I.R.C.P. 54(d)(1). The guidance for determining the prevailing party issue is supplied by I.R.C.P. 54(d)(2) which provides as follows:

> In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

I.R.C.P. 54(d)(2). The determination of who prevailed is committed to the discretion of the trial court. *Jorgensen v. Coppedge,* 148 Idaho 536, 538, 224 P.3d 1125, 1127 (2010) (citing *Shore v. Peterson,* 146 Idaho 903, 915, 204 P.3d 1114, 1126 (2009)).

I.R.C.P. 54(d)(1)(C) provides a list of costs that a prevailing party may recover as a matter of right as follows:

1. Court filing fees.

2. Actual fees for service of any pleading or document in the action whether served by a public officer or other person.

3. Witness fees of $20.00 per day for each day in which a witness, other than a party or expert, testifies at a deposition or in the trial of an action.

4. Travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of $.30 mile, one way, from the place of residence, whether it be within or without the state of Idaho; travel expenses of witnesses who travel other than by private transportation, other than a

party, computed as the actual travel expense of the witness not to exceed $.30 per mile, one way, from the place of residence of the witness, whether it be within or without the state of Idaho.

5. Expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action.

6. Reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not to exceed the sum of $500 for all such exhibits of each party.

7. Costs of all bond premiums.

8. Reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action not to exceed the sum of $2,000 for each expert witness for all appearances.

9. Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action.

10. Charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action.

Notwithstanding the determination that a particular party is entitled to costs as a matter of right under this subparagraph (C) in an action, the trial court in its sound discretion may, upon proper objection, disallow any of the above described costs upon a finding that said costs were not reasonably incurred; were incurred for the purpose of harassment; were incurred in bad faith; or were incurred for the purpose of increasing the costs to any other party. The mere fact that a deposition is not used in the trial of an action, either as evidence read into the record or for the purposes of impeachment, shall not indicate that the taking of such deposition was not reasonable, or that a copy of a deposition was not reasonably obtained, or that the cost of the deposition should otherwise be disallowed, so long as its taking was reasonable in the preparation for trial in the action.

I.R.C.P. 54(d)(1)(C).

In addition to costs as a matter of right, I.R.C.P. 54(d)(1)(D) provides for the award of discretionary costs as follows:

> Additional items of cost not enumerated in, or in an amount in excess of that listed in [I.R.C.P. 54(d)(1(C)], may be allowed upon a showing that said costs were necessary and exceptional costs reasonably incurred, and should in the interest of justice be assessed against the adverse party. The trial court, in ruling upon objections to such discretionary costs contained in the memorandum of costs, shall make express findings as to why such specific item of discretionary cost should or should not be allowed. In the absence of any objection to such an item of discretionary cots, the court may disallow on its own motion any such items of discretionary cots and shall make express findings supporting such disallowance.

I.R.C.P. 54(d)(1)(D). The decision to award discretionary costs is committed to the discretion of the trial court and the decision will not be overturned absent an abuse of discretion. *E.g., Fish v. Smith*, 131 Idaho 492, 493, 960 P.2d 175, 176 (1998)

However, as the rule provides, the trial court will only award discretionary costs if the prevailing party showed that they were necessary, reasonably incurred, exceptional, and assessable against the adverse party in the interests of justice. *Inama v. Brewer*, 132 Idaho 377, 384, 973 P.2d 148, 155 (1999). In making its determination, the trial court is not required to evaluate costs item by item, but instead may make express findings with regard to the general character of the requested costs. *Inama*, 132 Idaho at 384 (citing *Fish v. Smith*, 131 Idaho 492, 494, 960 P.2d 175, 177 (1998)).

The award of attorney fees is governed by I.R.C.P. 54(e)(1) which provides in part:

> In any civil action the court may award reasonable attorney fees, which at the discretion of the court may include paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract.

I.R.C.P. 54(e)(1). If the court can make an award of fees, the court has discretion to include an award for paralegal fees.

As to the amount of any fee award, I.R.C.P. 54(e)(3) provides a number of factors the Court must consider:

(A) The time and labor required.
(B) The novelty and difficulty of the questions.
(C) The Skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
(D) The prevailing charges for like work.
(E) Whether the fee is fixed or contingent.
(F) The time limitations imposed by the client or the circumstances of the case.
(G) The amount involved and the results obtained.
(H) The undesirability of the case.
(I) The nature and length of the professional relationship with the client.
(J) Awards in similar cases.
(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds that it was reasonably necessary in preparing a party's case.
(L) Any other factor which the court deems appropriate in the particular case.

The Court has discretion to decide what constitutes a reasonable fee and is to be guided by the above criteria. *Sanders v. Lankford*, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000). No one factor should be given more weight than the others. *Electric. Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 827, 41 P.3d 242, 255 (2001).

Discussion

The Court has entered two (2) amended judgments in this case. In the amended judgment in favor of Dwight Prehn, the Court awarded Dwight Prehn a judgment against The Source Store, LLC, for: 1) the balance of his loan, $79,232.00, plus interest; and 2) for back salary totaling $67,500.00, plus interest. In the amended judgment in favor of The Source Store, LLC, the Court awarded The Source Store, LLC judgment against The Source, LLC and Michael Hodge in the

amount of $38,687.83; and against Michael Hodge in the total amount of $217,214.39. The total of the awards, without interest, amounts to $402,634.22.

Defendants argue that Plaintiffs did not prevail on all of their claims, that many claims were dismissed before trial, and that the Court did not award Plaintiffs all of the damages Plaintiffs sought to recover. Defendants assert that Plaintiffs should be treated as a party who prevailed in part. Defendants also argue that costs should be allocated against the party who is liable for a particular claim.

While Plaintiffs did not prevail on all of their claims, and were not awarded all items of damages as claimed, as an exercise of discretion, the Court does find that Plaintiffs are the prevailing party in this action. Even though Defendants prevailed on at least one claim, and Plaintiffs withdrew many other claims, the Court does not find that this is a case where each party prevailed in part. As to the main issues in the case, Plaintiffs are clearly the prevailing party. As the prevailing party, Plaintiffs are entitled to an award of costs.

A. Costs

In the Memorandum of Costs, Plaintiffs seek an award of costs, as a matter of right, of $5,507.40. Defendants to not object to $3,510.40 as costs as a matter of right.

Defendants object to an award of costs, as a matter of right, for service fees for dismissed parties (George Brown and Christopher Clairborne), and for witnesses who were not called to testify by the Plaintiffs (Jesse Arp, Syringa Bank, Michael Baldner, Chris Halstead, Bodybuilding.com,

Neal Stuart, Janae Young, Blair Bews). Defendants argue these service fees are not reasonable. Plaintiffs have abandoned the request for an award of service fees for the dismissed parties. Plaintiffs' Opposition to Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs at pp. 2, 18. Plaintiffs do not otherwise respond to the objection to the service fees for witnesses not called by the Plaintiffs.

On April 1, 2013, the day that the trial was scheduled to begin, Defendants objected and moved to exclude a number of Plaintiffs' proposed exhibits relating to damages which Plaintiffs disclosed shortly before trial. The Court determined that the disclosure was not timely. However, rather than order exclusion, the Court vacated and reset the trial. The Court concludes that it would not be reasonable to assess costs against the Defendants for service fees associated with the first trial setting. The Court will decline to award any service fees that were specific to the April, 2013 trial setting. Trial counsel often must subpoena all witnesses with relevant testimony, but can only determine during trial the testimony which is actually needed. Defendants other objections to the costs claimed as of right are overruled.

Plaintiffs seek discretionary costs of $3,062.05. The discretionary costs include charges for Westlaw online research, computer forensic services, scanning of documents following inspection, the mediation fee, and the costs of trial exhibits which exceed the amount allowed as a matter of right. In his affidavit, counsel for Plaintiffs asserts that all of these charges were necessary and exceptional. Defendants object. Defendants assert the computer legal research was not exceptional or relevant. Defendants assert all of the costs related to making a copy of Source 1's server were

neither necessary or exceptional because the information contained on the server was otherwise available to Plaintiffs. Defendants argue that the mediation fee was not exceptional. Defendants argue that copying charges, above the amount which can be recovered as a matter of right, were not exceptional. In the Court's view, this was a fairly straight forward business dispute, and in this context, concludes that none of the requested discretionary costs were exceptional. The Court will sustain the objection to awarding discretionary costs.

B. Attorney Fees

Plaintiffs assert that they are entitled to an award of fees under Idaho Code §12-120(3); Idaho Code § 30-6-906(2) or Idaho Code §12-121. These sections authorize fees as follows:

Idaho Code § 12-120(3):

> In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs.
>
> The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

Idaho Code § 30-6-906:

> (1) Except as otherwise provided in subsection (2) of this section:
> (a) Any proceeds or other benefits of a derivative action under section 30-6-902, Idaho Code, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff; and
> (b) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

> (2) If a derivative action under section 30-6-902, Idaho Code, is successful in whole or in part, the district court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.
>
> Idaho Code § 12-121:
>
> In any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties, provided that this section shall not alter, repeal or amend any statute which otherwise provides for the award of attorney's fees. The term "party" or "parties" is defined to include any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

However, Idaho Code § 12-121 is limited and supplemented by I.R.C.P. 54(e)(1) which provides that that attorney fees under this provision may be awarded only when the court finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. *Karterman v. Jameson*, 132 Idaho 910, 916, 980 P.2d 574, 580 (Ct. App. 1999). Further, an award under Idaho Code § 12-121 is permitted only if the entire claim or defense is frivolous. *Payne v. Wallace*, 136 Idaho 303, 308, 32 P.3d 695, 700 (Ct. App. 2001).

In his objection to the request for fees, Hodge characterizes this action as a derivative action for the benefit of Source 1. Hodge asserts that under Idaho Code § 30-6-906, Plaintiffs' fees for successfully pursuing derivative claims can be awarded from the recovery to Source 1, but not against Hodge. This provision permits the court to make an award of fees in a successful derivative action from the recovery of the limited liability company. Hodge argues that the statute does not authorize fees against Hodge. Plaintiffs argue that this case involves a commercial transaction which allows for the recovery of fees under Idaho Code § 12-120(3). Plaintiffs argue that this is not a true derivative action because they were seeking to enforce their rights under the Operating

Agreement. Plaintiffs argue that they pursued the claims against Hodge as both direct and derivative claims. Plaintiffs argue that they suffered unique harm, apart from the other members, because it was uncertain whether any recovery would be sufficient to satisfy Prehn's loan and back salary and the capital accounts of the partners allowing for distribution to the members in proportion to their interests. Plaintiffs also assert that the inability to award fees against Hodge, who was the main bad actor, would penalize the innocent member who must incur the cost of litigation, and would reward the bad actor, who would be immune to an award of fees.

In the Court's view, with the exception of Prehn's individual claims on the note and for back salary, the claims in this case were brought as derivative claims; i.e. claims brought on behalf of, and resulting in an award for Source 1. Plaintiffs prevailed on the derivative claims for 1) failing to minimizing the expenses of completing the existing purchase orders ($114,530); 2) transferring to Source 2 software ($8,000), a shaker mold deposit ($12,400) and a shaker cup credit ($18,287.83); 3) manipulating the asset auction ($60,300); 4) forgiving the balance of Hodge's personal loan ($20,084.61); 5) failing to pay the market value of the vehicle ($2,299.78)[1]; and 6) paying a portion of Hodge's legal fees in this case ($20,000)[2] The recovery for these derivative claims is $255,902.22. As to each of these claims, the Court determined that Hodge breached his fiduciary duties. The Court also found that, as to some but not all of these claims, Hodge breached the obligations of the Operating Agreement and the Court's May 17, 2012 Order.

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[1] *See* Memorandum Decision and Order Re: Motions to Reconsider
[2] *Id.*

Prehn's claims for the balance of the note and for back salary are not derivative claims. These are personal individual claims seeking recovery on behalf of Prehn. The amount of the awards for these claims is $146,732, exclusive of interest.

Plaintiffs argue that Hodge is liable under Idaho Code § 12-120(3) because this case involves a commercial transaction. A commercial transaction is defined as one which is not for personal or household purposes. This was not an action for personal or household purposes. A party is entitled to an award of fees under Idaho Code § 12–120(3) as long as there is a commercial transaction between the parties. *Reynolds v. Trout Jones Gledhill Fuhrman, P.A.*, 154 Idaho 21, 26-27, 293 P.3d 645, 650-51 (2013) (citing *Soignier v. Fletcher,* 151 Idaho 322, 326, 256 P.3d 730, 734 (2011). As stated by the Supreme Court:

> Further, Idaho Code § 12-120(3) applies where "a 'commercial transaction' is integral to the claim, and constitutes the basis upon which the party is attempting to recover," and "[t]hus, as long as a commercial transaction is at the center of the lawsuit, the prevailing party may be entitled to attorney fees for claims that are fundamentally related to the commercial transaction yet sound in tort."

Reynolds v. Trout Jones Gledhill Fuhrman, P.A., 154 Idaho 21, 26-27, 293 P.3d 645, 650-51 (2013) (quoting *Carrillo v. Boise Tire Co., Inc.,* 152 Idaho 741, 755–56, 274 P.3d 1256, 1270–71 (2012) (quoting *Blimka v. My Web Wholesaler, LLC,* 143 Idaho 723, 728, 152 P.3d 594, 599 (2007)). (2013).[3]

[3] In the Court's view, the decision in *Reynolds* implicitly overrules a contrary rule stated in Rockefeller v. Grabow, 136 Idaho 637, 644-45, 39 P.3d 577, 584-85 (2001) ("Where the gravamen of the claim is for damages arising out of the breach of a fiduciary duty, an award of attorney fees is not proper under I.C. § 12-120(3) because the action sounds in tort.")

The Court concludes that the gravamen of this action arises out of the commercial transaction between the Plaintiffs and Defendants. Plaintiffs derivative claims against Hodge involve a commercial transaction. The Court does not agree that Idaho Code § 30-6-906 precludes an award against Hodge. The statute provides that an award also can be made from the recovery to the LLC. As the prevailing party, Plaintiffs are entitled to an award of fees against Hodge and Source 1 under Idaho Code § 12-120(3) for the successful derivative claims.

Prehn's individual claims against Source 1 do not involve household or personal matters. As a result, the Court concludes that awards for Prehn's individual claims qualify under Idaho Code § 12-120(3). As the prevailing party, Prehn is entitled to an award of fees against Source 1, but not Hodge, for fees associated with the personal loan and back salary.[4]

Under Idaho Code § 30-6-906, the Court also may make an award of fees to be paid out of the recovery in favor of Source 1.[5] As an exercise of discretion, the Court will make such an award relating to the derivative claims.

To award fees under Idaho Code § 12-121, the Court would have to find that the entire defense of this action would have to have been frivolous, unreasonable, or without foundation.

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[4] Hodge is not personally liable for these claims. *See* Memorandum Decision and Order Re: Motions to Reconsider.

[5] This Act repealed and supplanted the prior Act codified at Idaho Code § 53-601 *et seq.* The prior Act did not contain a similar provision. However, existing case law supported the rule that the plaintiff in a successful derivative action was entitled to an award of fees from the recovery to the entity. *Knutsen v. Frushour*, 92 Idaho 37, 41, 436 P.2d 521, 525 (1968) (affirming award of costs and fees from the property awarded to company in derivative action).

Thomas v. Madsen, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006). If there was a single legitimate, triable issue of fact or a legitimate issue of law, attorney fees may not be awarded under this statute. *Id.* (citing *McGrew v. McGrew,* 139 Idaho 551, 82 P.3d 833 (2003). Applying this standard, the Court concludes that fees cannot be awarded under Idaho Code § 12-121. At a minimum, there was a valid defense to Plaintiffs claim for lost profits.

Plaintiffs seek an award of fees of $250,014.32 consisting of the following:

Michael O. Roe (partner): 624.8 hours @ $225/hr $140,580.00

Matthew J. McGee (associate): 403.6 hours @$155/hr . . . . . $ 62,558.00

Tiffany M. Hudak (paralegal): 504.2 hours @$100/hr . . . . . $ 50,420.00

Less courtesy discount . . . . . $ (3,543.68)

Total $250,014.32

In support of this request, Plaintiffs have submitted an 85 page exhibit which contains a detailed explanation of the billings. Defendants object to the fee request as excessive and unreasonable. Defendants assert that counsel for the Defendants only billed a total of 512.93 hours for the entire defense compared to 1,532 hours billed to the Plaintiffs. Defendants argue that the case did not involve novel or complex issues. Defendants argue that Plaintiffs should not be reimbursed for the fees incurred in preparing for trial twice. Defendants point out that Plaintiffs only called three (3) witnesses. Defendants also object because the billing exhibit does not apportion fees between the individual and derivative claims.

In the Court's view, the derivative claims were the claims which required the bulk of the legal work in this case. These claims required an understanding of the history of the business of Source I, the involvement by the members, the growth of the business, and ultimately, the unraveling of the relationship between Hodge and Prehn, the dissolution of Source 1 and the costs of processing the existing purchase orders. The evidence relating to the costs claimed to be necessary to the processing of the existing orders involved a significant number of business and financial records. The evidence relating to the auction process was somewhat complicated. The evidence relating to the other claims (business software, cup discount, mold credit, vehicle purchase, cancellation of Hodge's loan and payment of a portion of Hodge's legal fees) was less complicated, but required a detailed presentation supported by business, financial and other records. Plaintiffs' counsel were well prepared, and exhibited skill and competence in presenting Plaintiffs' case.

The entire case was tried to the Court in four (4) days. Prior to trial, the case did not involve a significant number of pretrial hearings.

The Court is familiar with the general range of attorney and paralegal fees for commercial litigation prevailing in this area. The hourly rate charged by Plaintiffs' attorneys in this case are in the mid range of those fees for attorneys with comparable experience. The hourly rate charged for counsel's paralegal fees are also in the mid range of such fees. The Court finds that the hourly rates charge by counsel in this case are reasonable.

The Court is familiar with other commercial disputes that have resulted in a trial of about the length of this case. This case was somewhat more complicated in that a significant number of business and financial records had to be discovered, analyzed and presented. The Court has considered the memorandum of fees and costs and the opposition. The Court has weighed each of the factors identified in I.R.C.P. 54(e)(3). As an exercise of discretion, the Court does determine that it would be unreasonable to require Defendants to pay for all of the fees requested by Plaintiffs. The Court will award attorney fees to Plaintiffs in the amount of $187,500.00.

The Court will apportion these fees as follows:

1. Plainittfs' derivative claims: $162,500.00
2. Prehn's individual claims: $ 25,000.00

Conclusion

As explained above, except for any service fees that relate to the vacated trial, the Court will grant the costs requested as a matter of right. The Court will decline to grant requested discretionary costs. The Court awards Plaintiffs attorney fees in the amount of $162,500.00 for the derivative claims. This award is entered against Hodge. In addition, this award can be enforced against the recovery by Source 1. The Court awards Prehn attorney fees in the amount of $25,000.00 for the

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awards related to the loan and back salary. This award is entered against Source 1. Plaintiffs' counsel may submit appropriate forms of amended judgments reflecting these awards.

IT IS SO ORDERED.

Dated this 21 day of July, 2014.

Patrick H. Owen
District Judge

CERTIFICATE OF MAILING

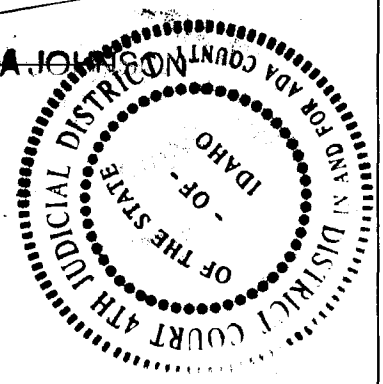
I hereby certify that on the 22 day of July, 2014, I mailed a true and correct copy of the within instrument to:

MICHAEL O. ROE
MOFFATT THOMAS BARRETT ROCK
& FIELDS, CHARTERED
PO BOX 829
BOISE, ID 83701-0829

ED GUERRICABEITIA
DAVISON COPPLE COPPLE & COPPLE
PO BOX 1583
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Clerk



NO. _____
A.M. 8:15 FILED P.M. _____

JUL 22 2014

CHRISTOPHER D. RICH, Clerk
By INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV-OC-2012-07728 AMENDED JUDGMENT FOR THE SOURCE STORE, LLC

As to all claims for relief, except for costs and fees which shall be determined and supplemented at a later date, asserted by Donnelly Prehn and Dwight Bandak to enforce the rights of The Source Store, LLC, an Idaho limited liability company, judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that The Source Store, LLC, recover as follows:

(1) from The Source, LLC, an Idaho limited liability company, and Michael L. Hodge II, jointly and severally, the sum of $38,687.83, together with interest at the lawful rate until paid; and

(2) from Michael L. Hodge II the sum of $217,214.39, together with interest at the lawful rate until paid.

DATED this 21 day of July, 2014.

PATRICK H. OWEN
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of July, 2014, I mailed a true and correct copy of the within instrument to:

MICHAEL O. ROE
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BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Clerk

NO. _____
A.M. 8:15 FILED P.M. _____

JUL 22 2014

CHRISTOPHER D. RICH, Clerk
BY INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV-OC-2012-07728

AMENDED JUDGMENT FOR DONNELLY PREHN

As to all claims for relief, except for costs and fees which shall be determined and supplemented at a later date, asserted by Donnelly Prehn against Defendants, judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Donnelly Prehn recover:

(1) from The Source Store, LLC, an Idaho limited liability company, the sum of $79,232.00, plus interest at the rate of 10% from December 29, 2011 to the date of final judgment, together with interest at the lawful rate until paid; and

(2) from The Source Store, LLC, the sum of $67,500.00, together with interest at the lawful rate until paid.

DATED this 24 day of July, 2014.

PATRICK H. OWEN
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of July, 2014, I mailed a true and correct copy of the within instrument to:

MICHAEL O. ROE
MOFFATT THOMAS BARRETT ROCK
& FIELDS, CHARTERED
PO BOX 829
BOISE, ID 83701-0829

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CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Clerk

NO. _____
A.M. 8:15 FILED P.M. _____

JUL 22 2014

CHRISTOPHER D. RICH, Clerk
BY INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV-OC-2012-07728

MEMORANDUM DECISION AND ORDER RE: MOTIONS TO RECONSIDER

Following the Court trial of this action, the Court entered Findings of Fact and Conclusions of Law on February 19, 2014. On March 18, 2014, Defendants The Source Store, LLC ("Source 1"), The Source, LLC ("Source 2"), and Michael L. Hodge II ("Hodge") filed a motion for partial reconsideration along with a memorandum in support and the affidavits of Hodge and George M. Brown. Plaintiffs filed a response on April 22, 2014. Defendants filed a reply on April 25, 2014.

Plaintiffs filed a motion for partial reconsideration on April 15, 2014. Defendants filed an opposition on April 22, 2014. Plaintiffs filed a reply on April 25, 2014.

These matters were argued to the Court on April 29, 2014. Ed Guerricabeitia, Davison, Copple, Copple & Copple, LLP, appeared and argued for the Defendants. Matthew J. McGee,

Moffatt, Thomas, Barrett, Rock & Fields, Chtd., appeared and argued for the Plaintiffs. The Court took the matter under advisement.

Standard

Idaho Rule of Civil Procedure 11(a)(2)(B) permits a party to move for reconsideration of an interlocutory order, so long as final judgment has not yet been ordered. I.R.C.P. 11(a)(2)(B); *see also Telford v. Neibaur*, 130 Idaho 932, 950 P.2d 1271 (1998). Specifically, the rule states:

> A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment. A motion for reconsideration of any order of the trial court made after entry of final judgment may be filed within fourteen (14) days from the entry of such order; provided, there shall be no motion for reconsideration of an order of the trial court entered on any motion filed under Rules 50(a), 52(b), 55(c), 59(a), 59(e), 59.1, 60(a), or 60(b).

I.R.C.P. 11(a)(2)(B).

The Idaho Supreme Court has recognized that "[a] rehearing or reconsideration in the trial court usually involves new or additional facts, and a more comprehensive presentation of both law and fact." *Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990) (quoting *J.I. Case Co. v. McDonald*, 76 Idaho 223, 229, 280 P.2d 1070, 1073 (1955)). However, a party requesting reconsideration is not required to submit new or additional evidence. *Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100, 104 (Ct. App. 2006). The trial court may reconsider its orders for legal errors. *See Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100, 104 (Ct. App. 2006). The decision to grant or deny a request for reconsideration of an

interlocutory order rests in the sound discretion of the trial court. *Spur Products Corp. v. Stoel Rives LLP*, 143 Idaho 812, 815, 153 P.3d 1158, 1161 (2007).

Discussion

1. Defendants' Motion to Reconsider

A. Hodge's personal liability for Source 1's loan and back salary

In the Findings and Conclusions, the Court determined that Source 1 was liable for the balance due on Donnelly Prehn's personal loan to Source 1 and for back salary. The Court also determined that Hodge was jointly and severally liable for this amount. In reaching this conclusion, the Court relied on the Liquidation and Termination provision of the Operating Agreement, Tr. Ex. 1, at § 14.2, which provides for the distribution of the proceeds from the liquidation of the company's assets. In the motion for reconsider, Defendants argue that the Operating Agreement was essentially superseded by certain provisions of the stipulated May 17, 2012 Order Re: Dissolution of the Source Store, LLC and Related Matters. Paragraph 5 of that Order provided that, except for costs and expenses related to dissolution and the processing of existing orders, Source 1 was prohibited from making any other payments or distributions until the litigation concluded or upon order of the Court. Plaintiffs argue that Paragraph 5 applies only to distributions to members, not payments to creditors.

The Court has reviewed the language of Paragraph 5 and concludes that it is ambiguous. Hodge's construction that Paragraph 5 of the Court's Order prohibited him from making the distribution of assets as otherwise outlined in § 14.2 of the Operating Agreement is reasonable. As

a result, the Court concludes that Hodge should not be held personally liable for the non-payment of Prehn's loan and back salary. The Court will grant Defendants' motion for reconsideration as to this issue.

B. The fair market value of the vehicle conveyed to Hodge

Source 1 transferred the title to one of its vehicles to Hodge in 2012. At the time, the loan balance was $19,761.22. In its Findings and Conclusions, the Court determined that the value of the vehicle was $36,654.27. The Court determined that Hodge had been unjustly enriched by the difference. In determining that the value of the vehicle was $36,654.27, the Court relied upon the April, 2012 Balance Sheet, Tr. Ex. 1009. In the motion to reconsider, Hodge argues that the amount reflected in the balance sheet did not accurately reflect the current value of the vehicle, because the value of the vehicle reflected in the balance sheets was originally set at $36,654.27. Hodge argues that the actual value of the truck was between $21,459 and $22,663. Tr. Ex. 1055.[1] Hodge also asserts that Plaintiffs conceded that the value of the vehicle was approximately $20,000. Defendants' Memorandum in Support of Motion for Reconsideration at p. 6 (citing Plaintiff's Closing Argument at pp. 12-13). According to Defendant's the correct calculation of any unjust enrichment should use a value of between $21,459 and $22,663. Plaintiffs argue that the value used by the Court is supported by the record.

The Court has reviewed the evidence and argument and concludes that the value of the vehicle as reflected in the April, 2012 Balance Sheet was not an accurate valuation. As a result, the

Court will use the average of the two values reflected in Tr. Ex. 1055 to establish the value of the vehicle as $22,060. As a result, Hodge was unjustly enriched by $2,299.78. ($22,060 - $19,761.22) The Court will grant the motion to reconsider as to this issue.

C. Credit for payment of vehicle loan

As part of the vehicle transaction, Hodge assumed and paid the vehicle loan balance of $19,761.22. At the time, Hodge owed Source 1 a total of $20,084.61 for a personal loan. Hodge argues that he should receive credit against his personal loan for this amount. This argument is not well taken because it ignores the fact that Hodge got a vehicle which had a value of $22,060 and a lien in the amount of $19,761.22. Hodge acquired the vehicle and the debt. Hodge has been credited with paying the debt. Hodge cannot reasonably argue that he should receive the same credit a second time to apply to his loan balance. This aspect of the motion to reconsider is denied.

D. Damages attributable to transfer of Profit Maker software

In the Findings and Conclusions, the Court determined that Hodge transferred Source 1's software license to Source 2 prior to the asset auction, and that Source 1 was not compensated for its value. The Defendants argue that the transfer did not occur until after the asset auction so that the software was part of the auction. Plaintiffs argue that the Court correctly concluded that Hodge transferred the rights to the software prior to the asset auction. Defendants have failed to convince the Court that its determination was erroneous. The Court will deny this aspect of Defendants motion for reconsideration.

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[1] Defendants state this Exhibit was stipulated by the parties.

E. The Bodybuilding.com purchase order

In the Findings and Conclusions, the Court determined that Hodge breached his fiduciary duties by converting the large Bodybuilding.com purchase order that Source 1 received on April 9, 2013 to Source 2. The Defendants argue that this determination was erroneous because the parties agreed that Source 1 would only process the orders from prior to March 31, 2013. The Defendants have failed to demonstrate that the Court's ruling was erroneous. The April 9, 2013 purchase order was created entirely by the efforts of Source 1. This purchase order was made prior to the creation of Source 2. Hodge breached his fiduciary duties to Source 1 by converting this purchase order to Source 2. The Court will decline to reconsider this aspect of the motion to reconsider.

2. Plaintiffs' Motion to Reconsider

In the Findings and Conclusions, the Court found that Plaintiffs had not proven that Hodge used Source 1's funds to pay some of the legal fees incurred in this litigation by Source 2. In reaching this conclusion, the Court reviewed its notes from the trial. No transcript had been prepared. Janae Young, Source 2's bookkeeper testified on December 5 and December 6. When asked on redirect examination about whether Source 1 had paid legal fees to litigation counsel for the Defendants, initially Ms. Young testified that no such payments had been made. Later, Ms. Young discussed a payment of $20,000. The Court has now reviewed the audio of Ms. Young's testimony. The Court has access to Ada County District Court proceedings that are recorded by the Court's audio recording system. At about 9:52 a.m., Ms. Young reviewed Tr. Ex. 1007 and

clarified that Source 1 issued a check in the amount of $20,000 to litigation counsel for Hodge and Source 2 on May 7, 2012. A copy of that check can be found in Tr. Ex. 1007 at Bates SOURCE 1 2038.

In Plaintiffs' motion to reconsider, Plaintiffs argue that Hodge should be responsible for returning these funds to Source 1 because Plaintiffs prevailed in this action. The Defendants argue that Hodge should not have to repay the legal fees because Hodge would have been entitled to reimbursement of his fees under § 15 of the Operating Agreement. Tr. Ex. 1. The Defendants also argue that Hodge prevailed on many of the claims.

The Court has reviewed this matter and concludes that its earlier ruling that Plaintiffs failed to prove that Source 1 paid legal fees to litigation counsel for the Hodge and Source 2 is not supported by the record. In fact, Source 1 paid $20,000. The issue is then whether Hodge should repay these funds to Source 1. Under the Operating Agreement, members were entitled to advancement of costs and expenses pursuant to § 15.5, but only upon providing Source 1 with an undertaking for repayment if the member was not entitled to exculpation and indemnification. Hodge has not shown that he provided such an undertaking. Further, given the Court's other findings about Hodge's conduct, the Court concludes that Hodge is not entitled to exculpation or indemnification. As a result, the Court will order Hodge to repay Source 1 for the $20,000 fees advanced to counsel for Source 2 and Hodge. The Court will grant Plaintiffs' motion to reconsider.

Conclusion

As explained above, the Court will grant the Defendants' motion to reconsider as to 1) Hodge's personal liability for the Prehn note and back salary; and 2) the calculation of unjust enrichment for the vehicle. In all other respects, Defendants' motion to reconsider is denied.

The Court will grant Plaintiffs' motion to reconsider as to the fees Source 1 paid to Hodge's counsel.

IT IS SO ORDERED.

Dated this 21 day of July, 2014.

Patrick H. Owen
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of July, 2014, I mailed a true and correct copy of the within instrument to:

MICHAEL O. ROE
MOFFATT THOMAS BARRETT ROCK
& FIELDS, CHARTERED
PO BOX 829
BOISE, ID 83701-0829

ED GUERRICABEITIA
DAVISON COPPLE COPPLE & COPPLE
PO BOX 1583
BOISE, ID 83701

CHRISTOPHER D. RICH
Clerk of the District Court

By: _____
Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **SECOND AMENDED JUDGMENT FOR THE SOURCE STORE, LLC**

As to all claims for relief asserted by Donnelly Prehn and Dwight Bandak to enforce the rights of The Source Store, LLC, an Idaho limited liability company, judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that The Source Store, LLC, recover as follows:

(1) from The Source, LLC, an Idaho limited liability company, and Michael L. Hodge II, jointly and severally, the sum of $38,687.83, together with interest at the lawful rate until paid;

ORIGINAL

(2) from Michael L. Hodge II the sum of $217,214.39, together with interest at the lawful rate until paid;

(3) from Michael L. Hodge II the sum of $162,500.00 in attorney fees, together with interest at the lawful rate until paid; and

(4) from Michael L. Hodge II the sum of $4,219.63 in costs of suit as a matter of right, together with interest at the lawful rate until paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Donnelly Prehn and Dwight Bandak, derivative plaintiffs asserting claims to enforce the rights of The Source Store, LLC, recover from The Source Store, LLC the sum of $162,500.00 in attorney fees, together with interest at the lawful rate until paid.

DATED this 18 day of August, 2014.

By _____
The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of Aug, 2014, I caused a true and correct copy of the foregoing **SECOND AMENDED JUDGMENT FOR THE SOURCE STORE, LLC** to be served by the method indicated below, and addressed to the following:

Michael O. Roe
Matthew J. McGee
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Facsimile (208) 385-5384
Attorneys for Plaintiffs

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

E. Don Copple
Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendants

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

CHRISTOPHER D. RICH
By: JOHNSON
Clerk of the Court

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs, vs. THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Case No. CV OC 1207728 **SECOND AMENDED JUDGMENT FOR DONNELLY PREHN**

As to all claims for relief asserted by Donnelly Prehn against Defendants, judgment is entered as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Donnelly Prehn recover:

(1) from The Source Store, LLC, an Idaho limited liability company, the sum of $79,232.00, plus interest at the rate of 10% from December 29, 2011 to the date of final judgment, together with interest at the lawful rate until paid;

ORIGINAL

(2) from The Source Store, LLC, the sum of $67,500.00, together with interest at the lawful rate until paid;

(3) from The Source Store, LLC, the sum of $25,000.00 in attorney fees, together with interest at the lawful rate until paid; and

(4) from the Source Store, LLC, the sum of $649.17 in costs of suit as a matter of right, together with interest at the lawful rate until paid.

DATED this 18 day of August, 2014.

By _____
The Honorable Patrick H. Owen
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of Aug, 2014, I caused a true and correct copy of the foregoing **SECOND AMENDED JUDGMENT FOR DONNELLY PREHN** to be served by the method indicated below, and addressed to the following:

Michael O. Roe
Matthew J. McGee
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Facsimile (208) 385-5384
Attorneys for Plaintiffs

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( ) Hand Delivered
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( ) Facsimile

E. Don Copple
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DAVISON COPPLE COPPLE & COPPLE, LLP
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Attorneys for Defendants

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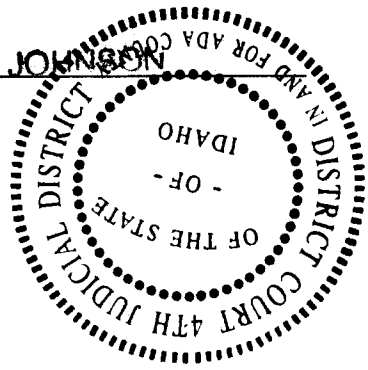
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

CHRISTOPHER D. RICH
INGA JOHNSON
Clerk of the Court



NO. _____
A.M. _____ FILED P.M. 3:26

AUG 2 8 2014

CHRISTOPHER D. RICH, Clerk
By KATRINA THIESSEN
DEPUTY

E DON COPPLE, ISB No. 1085
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Attorneys for Defendant
Michael L. Hodge II

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs-Respondents,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants-Appellant.

Case No. CV-OC-2012-07728

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, DONNELLY PREHN and DWIGHT BANDAK AND THEIR ATTORNEYS MICHAEL O. ROE AT MOFFATT, THOMAS, BARRETT, ROCK & FIELDS CHARTERED, 101 S. CAPITOL BLVD., 10TH FLOOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Michael L. Hodge II, appeals against the above named Respondents to the Idaho Supreme Court from the Findings of Fact and Conclusions of Law entered on February 19, 2014, Memorandum Decision and Order Re: Motion for Reconsider

ORIGINAL

BT

entered on July 22, 2014, Memorandum Decision and Order Re: Plaintiffs' Memorandum of Attorney Fees and Costs entered on July 22, 2014 and the Judgment For The Source Store, LLC entered on April 1, 2014, Amended Judgment for The Source Store, LLC entered on July 22, 2014 and the Second Amended Judgment for The Source Store, LLC entered in this case on August 18, 2014, Honorable Patrick H. Owen presiding.

2. That Appellant, Michael L. Hodge II, has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. Appellant intends to assert the following issues on appeal:

a. Whether the District Court erred in finding as a matter of law that the Appellant, Michael L. Hodge II, breached his fiduciary duties for failing to minimize the costs of completing the existing purchase orders to The Source Store, LLC and its members;

b. Whether the District Court erred in finding as a matter of law that the Appellant, Michael L. Hodge II, breached his fiduciary duties in the manner he orchestrated the asset auction to The Source Store, LLC and its members;

c. Whether the District Court erred in finding as a matter of law that the Appellant, Michael L. Hodge II, was unjustly enriched at the detriment of The Source Store, LLC and its members;

d. Whether the District Court erred in its award of damages against Appellant, Michael L. Hodge II, personally, in favor of The Source Store, LLC;

e. Whether the District Court erred in its award of attorney fees and costs against Appellant, Michael L. Hodge II, in favor of The Source Store, LLC;

f. Whether the District Court erred in finding as a matter of law that Respondents' had standing to properly assert a derivative claim on behalf of The Source Store, LLC against Appellant, Michael L. Hodge II, The Source, LLC or any of the other defendants;

g. Whether the District Court erred in finding as a matter of law that Respondents' made proper demand, in compliance with Idaho Code § 30-6-902, upon The Source Store, LLC to bring an action against Appellant, Michael L. Hodge II, The Source, LLC or any other defendants;

h. Whether the District Court erred in finding as a matter of law that Respondents properly pled the derivative claims in the Second Amended Complaint on behalf of The Source Store, LLC as against Appellant, Michael L. Hodge II, The Source, LLC or any other defendants;

i. Whether the District Court erred in finding as a matter of law that Respondents did not have a conflict of interest in employing the same counsel to prosecute all of Respondents' personal claims as well as Respondents' asserted derivative claims on behalf of The Source Store, LLC as against Appellant, Michael L. Hodge II, The Source, LLC or any other defendants;

j. Whether the District Court erred as a matter of law in finding that Respondents established that demand to assert a derivative action on

behalf of The Source Store, LLC would have been futile in accordance with Idaho Code § 30-6-902; and

k. Whether the District Court erred in refusing to hear Defendants' Joint Motion to Dismiss Derivative Claims prior to allowing the merits of the claims to be held at trial.

4. a. Is a reporter's transcript requested? Yes.

b. The Appellant requests the preparation of the following portions of the reporter's transcript:

1) The transcript of the trial held on December 2, 2013 through December 6, 2013;

2) The transcript of Appellants' Joint Motion to Dismiss Derivative Claims held on April 1, 2013;

3) The transcript of Appellant and Respondents' Motions of Reconsideration held on April 29, 2014; and

4) The transcript of Respondents' Memorandum of Attorney Fees and Costs and Appellant's Objection thereto held on April 29, 2014;

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically under Rule 28, I.A.R.:

1) Defendants' Joint Motion to Dismiss Derivative Claims filed on March 1, 2013;

2) Affidavit of Ed Guerricabeitia in Support of Joint Motion to Dismiss Derivative Claims (and Attachments) filed on March 1, 2013;

3) Amended Affidavit of Ed Guerricabeitia in Support of Joint Motion to

Dismiss Derivative Claims (and Attachments) file don March 5, 2013;

4) Memorandum in Support of Joint Motion to Dismiss Derivative Claims filed on March 1, 2013;

5) Defendants' Closing Argument filed on December 23, 2013;

6) Defendants' Rebuttal Closing Argument filed on January 3, 2014;

7) Plaintiffs' Closing Argument filed on or about December 23, 2013;

8) Plaintiffs' Closing Response filed on or about January 3, 2014;

9) Stipulation to The Parties' Trial Exhibits filed on November 27, 2013;

10) Defendants' Exhibits 1000 through 1074;

11) Stipulation for Voluntary Dismissal With Prejudice;

12) Order Granting Stipulation for Voluntary Dismissal With Prejudice filed on June 6, 2013;

13) Plaintiffs' Memorandum of Attorney Fees and Costs filed on or about March 5, 2014;

14) Affidavit of Michael O. Roe in Support of Plaintiffs' Memorandum of Attorney Fees and Costs (and Attachments) filed on or about Mach 5, 2014;

15) Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on March 19, 2014;

16) Affidavit of Ed Guerricabeitia in Support of Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on March 19, 2014;

17) Defendants' Memorandum in Support of Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees

and Costs filed on March 19, 2014;

18) Defendants' Response Memorandum to Plaintiffs' Opposition to Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on April 25, 2014;

19) Order RE: Dissolution of The Source Store, LLC and Related Matters entered on May 17, 2012;

6. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 28th day of August, 2014.

DAVISON, COPPLE, COPPLE & COPPLE

By _____
Ed Guerricabeitia, of the firm
Attorneys for Defendant-Appellant
Michael L. Hodge II

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of August, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701	✓ by U.S. Mail _____ by Hand Delivery _____ by Facsimile _____ by Electronic Mail
Kasey Redlich Court Reporter 200 W. Front Street Boise, Idaho 83702-7300	_____ by U.S. Mail ✓ by Hand Delivery _____ by Facsimile _____ by Electronic Mail

Ed Guerricabeitia

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiff,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II; GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 2012 07728

THIRD AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1) Plaintiff, The Source Store, LLC is granted judgment against Defendants, The Source, LLC and Michael L. Hodge, II, jointly and severally, in the amount of $38,687.83, together with interest at the lawful rate provided for by law until paid.

2) Plaintiff, The Source Store, LLC is granted judgment against Defendant, Michael L. Hodge, II, in the amount of $217,214.39, plus costs in the amount of $4,219.63 and attorney fees in the amount of $162,500.00, together with interest at the lawful rate provided for by law until paid.

3) Plaintiff, Donnelly Prehn, is granted judgment against Defendant, The Source Store, LLC in the amount of $79,232.00, plus interest at the rate of 10% from December 29, 2011 to the date of final judgment, together with interest at the lawful rate provided for by law until paid.

4) Plaintiff, Donnelly Prehn, is granted judgment against Defendant, The Source Store, LLC in the amount of $67,500.00, plus costs in the amount of $649.17 and attorney fees in the amount of $25,000.00, together with interest at the lawful rate provided for by law until paid.

5) Plaintiffs, Donnelly Prehn and Dwight Bandak, are awarded attorney fees in the amount of $162,500.00 from the recovery of The Source Store, LLC.

DATED this 3 day of October, 2014.

Patrick H. Owen

PATRICK H. OWEN
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of October, 2014, I caused a true and correct copy of the foregoing JUDGMENT to be served by the method indicated below, and addressed to the following:

Michael O. Roe
Matthew J. McGee
MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Facsimile (208) 385-5384
Attorneys for Plaintiffs

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

E. Don Copple
Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendants The Source Store, LLC, The Source, LLC and Michael L. Hodge II

(X) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
( ) Facsimile

CHRISTOPHER D. RICH
Clerk of the District Court
Ada County, Idaho

By: INGA JOHNSON
Deputy Clerk

4TH JUDICIAL DISTRICT COURT IN AND FOR ADA COUNTY STATE OF IDAHO

Appeal/Appeals
NWE 10/14/14

E DON COPPLE, ISB No. 1085
ED GUERRICABEITIA, ISB No. 6148
DAVISON, COPPLE, COPPLE & COPPLE
Attorneys at Law
Washington Mutual Capitol Plaza, Suite 600
199 North Capitol Boulevard
Post Office Box 1583
Boise, Idaho 83701
Telephone: (208) 342-3658
Telecopier: (208) 386-9428

Attorneys for Defendant
Michael L. Hodge II

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs-Respondents,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants-Appellant.

Case No. CV-OC-2012-07728

AMENDED NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS, DONNELLY PREHN and DWIGHT BANDAK AND THEIR ATTORNEYS MICHAEL O. ROE AT MOFFATT, THOMAS, BARRETT, ROCK & FIELDS CHARTERED, 101 S. CAPITOL BLVD., 10TH FLOOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Michael L. Hodge II, appeals against the above named Respondents to the Idaho Supreme Court from the Findings of Fact and Conclusions of Law entered on February 19, 2014, Memorandum Decision and Order Re: Motion for Reconsider

SV

entered on July 22, 2014, Memorandum Decision and Order Re: Plaintiffs' Memorandum of Attorney Fees and Costs entered on July 22, 2014 and the Judgment For The Source Store, LLC entered on April 1, 2014, Amended Judgment for The Source Store, LLC entered on July 22, 2014, the Second Amended Judgment for The Source Store, LLC entered on August 18, 2014 and the Third Amended Judgment entered in this case on October 3, 2014, Honorable Patrick H. Owen presiding.

2. That Appellant, Michael L. Hodge II, has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1), I.A.R.

3. Appellant intends to assert the following issues on appeal:

a. Whether the District Court erred in finding as a matter of law that the Appellant, Michael L. Hodge II, breached his fiduciary duties for failing to minimize the costs of completing the existing purchase orders to The Source Store, LLC and its members;

b. Whether the District Court erred in finding as a matter of law that the Appellant, Michael L. Hodge II, breached his fiduciary duties in the manner he orchestrated the asset auction to The Source Store, LLC and its members;

c. Whether the District Court erred in finding as a matter of law that the Appellant, Michael L. Hodge II, was unjustly enriched at the detriment of The Source Store, LLC and its members;

d. Whether the District Court erred in its award of damages against Appellant, Michael L. Hodge II, personally, in favor of The Source Store,

LLC;

e. Whether the District Court erred in its award of attorney fees and costs against Appellant, Michael L. Hodge II, in favor of The Source Store, LLC;

f. Whether the District Court erred in finding as a matter of law that Respondents' had standing to properly assert a derivative claim on behalf of The Source Store, LLC against Appellant, Michael L. Hodge II, The Source, LLC or any of the other defendants;

g. Whether the District Court erred in finding as a matter of law that Respondents' made proper demand, in compliance with Idaho Code § 30-6-902, upon The Source Store, LLC to bring an action against Appellant, Michael L. Hodge II, The Source, LLC or any other defendants;

h. Whether the District Court erred in finding as a matter of law that Respondents properly pled the derivative claims in the Second Amended Complaint on behalf of The Source Store, LLC as against Appellant, Michael L. Hodge II, The Source, LLC or any other defendants;

i. Whether the District Court erred in finding as a matter of law that Respondents did not have a conflict of interest in employing the same counsel to prosecute all of Respondents' personal claims as well as Respondents' asserted derivative claims on behalf of The Source Store, LLC as against Appellant, Michael L. Hodge II, The Source, LLC or any other defendants;

j. Whether the District Court erred as a matter of law in finding that

Respondents established that demand to assert a derivative action on behalf of The Source Store, LLC would have been futile in accordance with Idaho Code § 30-6-902; and

k. Whether the District Court erred in refusing to hear Defendants' Joint Motion to Dismiss Derivative Claims prior to allowing the merits of the claims to be held at trial.

4. a. Is a reporter's transcript requested? Yes.

b. The Appellant requests the preparation of the following portions of the reporter's transcript:

1) The transcript of the trial held on December 2, 2013 through December 6, 2013;

2) The transcript of Appellants' Joint Motion to Dismiss Derivative Claims held on April 1, 2013;

3) The transcript of Appellant and Respondents' Motions of Reconsideration held on April 29, 2014; and

4) The transcript of Respondents' Memorandum of Attorney Fees and Costs and Appellant's Objection thereto held on April 29, 2014;

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically under Rule 28, I.A.R.:

1) Defendants' Joint Motion to Dismiss Derivative Claims filed on March 1, 2013;

2) Affidavit of Ed Guerricabeitia in Support of Joint Motion to Dismiss Derivative Claims (and Attachments) filed on March 1, 2013;

3) Amended Affidavit of Ed Guerricabeitia in Support of Joint Motion to Dismiss Derivative Claims (and Attachments) file don March 5, 2013;

4) Memorandum in Support of Joint Motion to Dismiss Derivative Claims filed on March 1, 2013;

5) Defendants' Closing Argument filed on December 23, 2013;

6) Defendants' Rebuttal Closing Argument filed on January 3, 2014;

7) Plaintiffs' Closing Argument filed on or about December 23, 2013;

8) Plaintiffs' Closing Response filed on or about January 3, 2014;

9) Stipulation to The Parties' Trial Exhibits filed on November 27, 2013;

10) Defendants' Exhibits 1000 through 1074;

11) Stipulation for Voluntary Dismissal With Prejudice;

12) Order Granting Stipulation for Voluntary Dismissal With Prejudice filed on June 6, 2013;

13) Plaintiffs' Memorandum of Attorney Fees and Costs filed on or about March 5, 2014;

14) Affidavit of Michael O. Roe in Support of Plaintiffs' Memorandum of Attorney Fees and Costs (and Attachments) filed on or about Mach 5, 2014;

15) Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on March 19, 2014;

16) Affidavit of Ed Guerricabeitia in Support of Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on March 19, 2014;

17) Defendants' Memorandum in Support of Objection to Plaintiffs'

Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on March 19, 2014;

18) Defendants' Response Memorandum to Plaintiffs' Opposition to Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on April 25, 2014;

19) Order RE: Dissolution of The Source Store, LLC and Related Matters entered on May 17, 2012;

6. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 10th day of October, 2014.

DAVISON, COPPLE, COPPLE & COPPLE

By _____
Ed Guerricabeitia, of the firm
Attorneys for Defendant-Appellant
Michael L. Hodge II

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2014, a true and correct copy of the foregoing was served upon the following:

Michael O. Roe Moffatt, Thomas, Barrett, Rock Fields, Chartered 101 S. Capitol Blvd., 10th Fl. P.O. Box 829 Boise, Idaho 83701	✓ by U.S. Mail _____ by Hand Delivery _____ by Facsimile _____ by Electronic Mail
Kasey Redlich Court Reporter 200 W. Front Street Boise, Idaho 83702-7300	✓ by U.S. Mail _____ by Hand Delivery _____ by Facsimile _____ by Electronic Mail

Ed Guerricabeitia

ORIGINAL

WILLIAM SMITH ISB #6134
SMITH HORRAS, P.A.
5661 N. GLENWOOD ST.
P.O. BOX 140857
BOISE, ID 83714
TELEPHONE: (208) 697-5555
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bill@smithhorras.com

Matthew K. Taylor, ISB #8752
Taylor Law Offices, PLLC
802 W. Bannock St. LP#108
Boise, ID 83702
Telephone: 208.342.3006
Facsimile: 208.343.6608
assistant@taylorlawoffices.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK,

Plaintiffs,

vs.

THE SOURCE STORE, LLC; THE SOURCE, LLC; MICHAEL L. HODGE II, GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE,

Defendants.

Case No. CV OC 1207728

REQUEST FOR ADDITIONAL RECORD

TO: THE ABOVE NAMED APPLELLANT(S) AND THEIR ATTORNEYS ED GUERRICABEITIA AT DAVISON, COPPLE, COPPLE AND COPPLE, 199 NORTH CAPITOL BOULEVARD, SUITE 600, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the including of the following material in the clerk's record in hard copy format in addition to that required to be included by the I.A.R. and the notice of appeal.

A. The Clerk's Record:

1. Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests filed on September 21, 2012;

2. Memorandum in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests filed on September 21, 2012;

3. Affidavit of Mathew J. McGee in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests filed on September 21, 2012;

4. Report of Wind Up filed on January 17, 2013;

5. Affidavit of Janae Young filed on January 17, 2013;

6. Affidavit of Michael L. Hodge, II filed on January 17, 2013;

7. Objection and Response to Joint Motion to Dismiss Derivative Claims filed on March 13, 2013;

8. Michael L. Hodge, II and The Source, LLC's Trial Brief filed on March 28, 2013;

9. Plaintiffs' Trial Memorandum filed on April 1, 2013;

10. Order Granting Stipulation for Voluntary Dismissal with Prejudice filed on June 6, 2013;

11. All Orders Granting Stipulation for Voluntary Dismissal with Prejudice filed on June 6, 2013;

12. Order Granting Stipulation for Voluntary Dismissal with Prejudice of George M. Brown, filed on June 6, 2013

13. Plaintiffs' Opposition to Defendants' Objection to Plaintiffs' Memorandum of Attorney Fees and Costs and Motion to Disallow Attorney Fees and Costs filed on April 22, 2014;

14. Memorandum in Support of Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel filed on October 4, 2012;

15. Affidavit of Counsel in Support of Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel filed on October 4, 2012;

16. Affidavit of Michael Hodge, II in Support of Motion for Protective Order and in Opposition to Plaintiffs' Motion to Compel filed on October 4, 2012;

17. Reply in Support of Motion to Compel Response of The Source, LLC to Plaintiffs' Discovery Requests filed on October 12, 2012;

18. Second Affidavit of Mathew J. McGee in Support of Motion to Compel Responses of The Source, LLC to Plaintiffs' Discovery Requests;

19. Defendants' Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law filed on March 18, 2014;

20. Defendants' Memorandum in Support of Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law filed on March 18, 2014;

21. Affidavit of Michael Hodge, II in Support of Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law filed on March 18, 2014;

22. Affidavit of George Brown in Support of Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law filed on March 18, 2014;

23. Defendants' Memorandum in Opposition to Plaintiffs' Motion for Reconsideration filed on April 22, 2014;

24. Plaintiffs' Response to Defendants' Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law filed on April 22, 2014;

25. Memorandum Decision and Order re: Cost and Fees filed on February 21, 2013;

26. Memorandum Decision and Order re: Motion to Reconsider filed on July 22, 2014;

27. Defendants' Reply Memorandum to Plaintiffs' Response to Defendants' Motion for Reconsideration of Court's Findings of Fact and Conclusions of Law filed on April 25, 2014; and

28. Reply in Support of Motion for Reconsideration filed on April 25, 2014.

B. Exhibits:
   1. All Plaintiffs' exhibits admitted at trial;

C. I certify that this request for additional record has been served upon the clerk of the district court and upon all parties required to be served pursuant to Rule 20.

DATED this 24th day of October, 2014.

SMITH HORRAS, P.A.

By _____
William L. Smith
Attorneys for Plaintiffs

DATED this 24th day of October, 2014.

TAYLOR LAW OFFICES, PLLC

By _____
Matthew K. Taylor
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of October, 2014, I caused a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

E. Don Copple
Edward J. Guerricabeitia
DAVISON COPPLE COPPLE & COPPLE, LLP
199 N. Capitol Blvd., Suite 600
P.O. Box 1583
Boise, ID 83701-1583
Facsimile (208) 386-9428
Attorneys for Defendants

(x) U.S. Mail, Postage Prepaid
( ) Hand Delivered
( ) Overnight Mail
(x) Facsimile

Christopher Rich
Ada County Court Clerk
Room 1196
200 W. FRONT STREET
Boise, ID 83702-7300

(x) U.S. Mail, Postage Prepaid
(X) Hand Delivered
( ) Overnight Mail
( ) Facsimile

_____
William L. Smith

TO: CLERK OF THE COURT IDAHO SUPREME COURT
451 WEST STATE STREET, BOISE, IDAHO 83702
IN THE SUPREME COURT OF THE STATE OF IDAHO

DONNELLYPREHN and DWIGHT BANDAK, Plaintiffs-Respondents, vs. MICHAEL L. HODGE, II, Defendant-Appellant, and THE SOURCE STORE, LLC; THE SOURCE LLC; GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Supreme Court No. 42465 Case No. CV-OC-2012-7728 NOTICE OF TRANSCRIPT LODGING

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on June 1st, 2015, I lodged the following transcript(s): **Hearing dated: April 1, 2013, 44 pgs; Hearing dated: April 29, 2014, 26 pages; Court Trial dated: Dec. 2, 3, 5 & 6, 2013, 188 pages, for a total of 968 pages** in the above-referenced appeal with the District Court Clerk of the County of Ada, in the Fourth Judicial District.

Kasey A. Redlich,
Certified Court Reporter

6/1/15
Date

FW

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs-Respondents, vs. MICHAEL L. HODGE II, Defendant-Appellant, and THE SOURCE STORE, LLC; THE SOURCE, LLC; GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Supreme Court Case No. 42465 CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Affidavit of Ed Guerricabeitia in Support of Joint Motion to Dismiss Derivative Claims, filed March 1, 2013. Exhibit G to this Affidavit is SEALED.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 5th day of June, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

DISTRICT COURT 4TH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR ADA COUNTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Patrick H. Owen/Angela Hunt
District Judge/ Clerk

COURT TRIAL

DONNELLY PREHN and DWIGHT BANDAK,
Plaintiffs,

vs.

THE SOURCE STORE, et al,

Defendants.

EXHIBIT LIST

Case No. CV OC 12 7728

Plaintiff's Attorney: Michael Roe/Moffat Thomas
Defendant's Attorney: Ed Guerricabeitia/Davison Copple

BY PLTF	NO.	DESCRIPTION	STATUS	DATE
	1	Operating Agreement of The Source Store	ADMIT	12/02/13
	2	The Source Store, LLC Non-Compete Agreement for Michael L. Hodge II	ADMIT	12/03/13
	10	Email from M Hodge to M Brown, D Bandak, C Claiborne and D Prehn re Brd Budget 2011	ADMIT	12/02/13
	11	Email from D Prehn to M Hodge M Brown D Bandak and C Claiborne re Brd Budget 2011	ADMIT	12/02/13
	12	Email from Mike Hodge to Mike Brown, Don Prehn, Chris Claiborne, and Dwight Bandak re Board Budget for 2011	ADMIT	12/02/13
	15	Office Lease Agreement btwn Nielhof LLC and The Source Store, LLC	ADMIT	12/03/13
	17	Email from J. Arp to D Prehn, D Bandak, C Claiborne, M Brown, and M Hodge re FW: Valuation Request from The Source Store	ADMIT	12/03/13

20	Technology Plastics LLC Invoice No. 5029 to The Source Store, LLC	ADMIT	12/06/13
23	Email from M Hodge to D Prehn, M Brown, D Bandak, M Hodge, J Arp, & and C Claiborne re Board Meeting Documents	ADMIT	12/02/13
27	Office Lease Agreement between Hodge LLC and The Source Store, LLC (unsigned)	ADMIT	12/03/13
31	Email from Mike Hodge to Don Prehn re 2010 Total Distribution	ADMIT	12/02/13
32	Email from Chris Halstead to Blair Bews and Mike Hodge re FL2400014.pdf	ADMIT	12/02/13
35	The Source Store balance sheet & profit & loss statement for January 2012	ADMIT	12/03/13
37	Email from M Hodge to D Prehn, D Bandak, C Claiborne, and M Brown re Dissolution	ADMIT	12/02/13
39	The Source Store invoice to Tech Plastics	ADMIT	12/02/13
40	Email from M Hodge to D Prehn D Bandak, C Claiborne & M Brown re Dissolution Update	ADMIT	12/02/13
41	Certificate of Organization of Limited Liability Company for The Source, LLC	ADMIT	12/02/13
42	The Source, LLC Open Orders Report - Regular and Fulfillment Orders	ADMIT	12/02/13
43	Email from M Hodge to D Prehn, D Bandak, C Claiborne, and M Brown re Dissolution	ADMIT	12/02/13
44	E-mail from J Arp to D Prehn, D Bandak, C Claiborne, M Brown & M Hodge re: capital distributions	ADMIT	12/03/13
46	ASI Computer Systems Request for Transfer of ASICS License for Company Sold	ADMIT	12/03/13
47	ASI Computer Systems ProfitShield-Assurance Program Agreement to The Source, LLC	ADMIT	12/03/13

48	ASI Computer SystemsNetwork User License Agreement to The Source, LLC	ADMIT	12/03/13 ✓
50	ASI Computer Systems Investment Proposal to The Source, LLC	ADMIT	12/03/13 ✓
51	ASI Computer Systems New Company Information Completed by The Source, LLC	ADMIT	12/03/13 ✓
52	Correspondence from ASI Computer Systems to The Source, LLC	ADMIT	12/03/13 ✓
57	Statement of Dissolution Limited Liability Company of The Source Store, LLC	ADMIT	12/02/13 ✓
63	Email from M Hodge to M Brown, D Bandak, D Prehn & C Claiborne re: truck loan	ADMIT	12/02/13 ✓
65	Technology Plastics LLC Credit Memo No. 5244 to The Source Store, LLC	ADMIT	12/05/13 ✓
66	Email from M Hodge to M Roe, M Baldner, D Prehn, D Bandak M Brown, & C Claiborne re Molds for Shaker Cups	ADMIT	12/02/13 ✓
69	Email from Mike Brown to Jesse Arp re FW:Re:Credit for The Source	ADMIT	12/06/13 ✓
71	Correspondence from Ed Guerricabeitia to Mike Roe re Prehn et al v. Hodge et al	ADMIT	12/02/13 ✓
72	Email from M Hodge to D Prehn, D Bandak, T Fernandes, M Brown, and C Claiborne re Final Bid Process & Instructions	ADMIT	12/02/13 ✓
73	Correspondence from Ed Guerricabeitia to Technology Plastics re Prehn et al v. Hodge et al	ADMIT	12/02/13 ✓
75	The Source, LLC Monthly Booked Orders Report	ADMIT	12/02/13 ✓
76	Email from Chris Halstead to Mike Hodge and Blair Bews re FL2400014.pdf	ADMIT	12/02/13 ✓
82	Balance sheet; Profit/Loss statement for April 2012, The Source Store	ADMIT	12/03/13 ✓

86	Spreadsheet Entitled Summary Differential Analysis Equalizing Economic Benefit Between Mike Hodge and Don Prehn	ADMIT	12/03/13
89	The Source - Import Orders Cash Flow Needs	ADMIT	12/02/13
90	Email from Jade Welch to Mike Hodge re Please Approve Loan Pay Off	ADMIT	12/05/13
91	Email from Mike Hodge to Jade Welch	ADMIT	12/05/13
92	Email from Jade Welch to Mike Hodge	ADMIT	12/05/13
93	Email from Jade Welch to Mike Hodge	ADMIT	12/05/13
94	The Source, LLC Open Orders Report - Regular and Fulfillment Orders	ADMIT	12/02/13
98	The Source Store Cleared Checks Report for 10/2012	ADMIT	12/05/13
99	The Source Store Cleared Checks Report for 10/2012	ADMIT	12/05/13
100	Syringa Bank Receipt for Wire Transfer for $18,600 to Thrive Industrial by The Source, LLC	ADMIT	12/02/13
117	The Source, LLC Balance Sheet and Profit & Loss Statement for October 2012	ADMIT	12/06/13
123	The Source, LLC Balance Sheet and Profit & Loss Statement for December 2012	ADMIT	12/02/13
132	Audio Recording of Partner Call/Transcription of Call	ADMIT	12/02/13
133	The Source Store, LLC Bank Account Statements for Account No. 402009559	ADMIT	12/03/13
134	The Source Store, LLC Bank Account Statements for Account No. 102010790	ADMIT	12/03/13
135	The Source, LLC Bank Account Statements for Account No. 402009823	ADMIT	12/02/13
136	The Souce, Bank Acct Statement for Acct 402009831	ADMIT	12/05/13

146	The Source Store, LLC Monthly G/L Detail by Account Report	DENIED	12/03/13
163	Email from M Hodge to M Roe, M Baldner, N Stuart, M Brown, C Claiborne, D Bandak, D Copple, and M Hodge re Open Orders Report	ADMIT	12/03/13
164	Damages Summary	ADMIT	12/03/13
165	Source 1 Actual Performance	ADMIT	12/03/13
166	Diversion of Source 1's Funds and Unjust Enrichment	ADMIT	12/03/13
167	Lost Profits on Shaker Cup Sales	ADMIT	12/03/13
168	Email from Jesse Arp to Don Prehn re Fw: Board Meeting	ADMIT	12/03/13
169	Affidavit of Michael Hodge	ADMIT	12/06/13
170	e-mail betwn Pete and Ed Guerricabeitia	ADMIT	12/06/13
171	e-mail between Hodge and Baldner	ADMIT	12/06/13
172	e-mail from T Fernandes to M Hodge 05/18/12 re: Final Bid Process & Instructs.	ADMIT	12/06/13
1002	Audio Recording and Transcript of Board Meeting	ADMIT	12/03/13
1003	Source 1's Operating Agreement and Amendments	ADMIT	12/03/13
1004	The Source Ownership Proposal	ADMIT	12/03/13
1005	Source 1 Corporate notes re: Partner Profit Strategies for Don and Mike	ADMIT	12/03/13
1006	Source 2's Bank Statements	ADMIT	12/06/13
1007	Source 1's Bank Statements	ADMIT	12/03/13
1009	Source 1's Balance Sheets and Profit & Loss Statements	ADMIT	12/06/13

1010	Janae Young's Work File Reconciling Source I's Account for Report of Wind Up	ADMIT	12/05/13
1011	Donnelly Prehn's Non-Compete Agreement with Source 1	ADMIT	12/05/13
1012	Summary of Payment Transfers Between Source I and Source 2	ADMIT	12/05/13
1013	Summary of Credit/Offset Payments due to Source 2 from Source I	ADMIT	12/05/13
1014	Summary of Hodge Vehicle Loan Repayment to Source I	ADMIT	12/05/13
1016	Summary and Back-Up Documents with Regards to Source 1's Prepayment of Plastic Material to Technology Plastics	ADMIT	12/06/13
1017	Mike Hodge Email to all Source 1 Members with Proposed Budget and Salaries for 2011 with Attachments	ADMIT	12/03/13
1018	Mike Brown String Email to all Source 1 Members Concerning Proposed Budget and Salaries for 2011	ADMIT	12/06/13
1019	Don Prehn's Email to all Source 1 Members Agreeing to Proposed Budget and Salaries for 2011	ADMIT	12/03/13
1022	Mike Hodge Email to all Source I Members	ADMIT	12/02/13
1025	E-mail J Nielson to B Bews & M Hodge Concerning the Building	ADMIT	12/05/13
1029	Don Prehn's Email to all Source I Members Requesting a Partner's Vote for on the Information He Requested	ADMIT	12/03/13
1030	Don Prehn's Email Proposing to Buyout his Shares or Mike's Shares in Source I with String Email for the Basis of his Proposal	ADMIT	12/03/13
1031	E-mail Dwight Bandak to Mike Hodge	ADMIT	12/05/13

1043	J. Arp e-mail to Source 1 members – Share of Distribution for 2010 Earnings	ADMT	12/05/13
1044	All Source I Members' Emails for Their Unanimous Vote on April 4, 2012 to Dissolve Source I Effective April 1, 2012	ADMIT	12/03/13
1045	Email Correspondence Confirming Closing of the Building	ADMIT	12/03/13
1046	Mike Hodge Email to all Source I Members in Response to Don Prehn's Email dated April 6, 2012	ADMIT	12/03/13
1047	Don Prehn's Email to all Source I Members in Response to Mike Hodge's Email dated April 9, 2012	ADMIT	12/03/13
1049	Mike Hodge Email to all Source I Members Concerning the Dissolution of Source I	ADMIT	12/03/13
1053	Jesse Arp Email to all Source I Members Attaching Breakdown of Each Members' Respective Distribution of 2011 Earnings	ADMIT	12/03/13
1056	Mike Hodge Email to all Source I Members Concerning Truck and Loan	ADMIT	12/03/13
1058	M Hodge Email to all Source I Members, M Baldner, M Roe and D Copple regarding April Booked and Billed Sales	ADMIT	12/03/13
1059	Email Correspondence Between Don Prehn and Edward Butkevich	ADMIT	12/02/13
1060	M Hodge Email to all Source I Members after Conclusion of the Auction	ADMIT	12/03/13
1061	D Prehn's Email to M Hodge, E Guerricabeitia, M Roe and M Baldner Presenting his Final Bids on the Assets of Source I at the Auction	ADMIT	12/03/13
1062	Mike Hodge's Email to Mike Baldner and Ed Guerricabeitia Presenting his Final Bids on the Assets of Source I at the Auction	ADMIT	12/03/13

1065	Email Correspondence and Attachments Between Don Prehn and Representatives of Bodybuilding.com	ADMIT	12/05/13
1066	Discount and Rebate Program Between Bodybuilding.com and Source I	ADMIT	12/03/13
1068	Summary of Bodybuilding.com's percentage of total orders and Profits betw Souce 1 and 2	ADMIT	12/05/13
1070	Source 1's Business Plan for 2004	ADMIT	12/05/13
1072	Summary of Source I's Net Profits from January'10 through September' 12	ADMIT	12/05/13
1073	Summary of Source I's General Expenses with and w/o Legal or Extraordinary Expenses from Jan. 11 through Dec 12	ADMIT	12/05/13
1074	Summ. of Source I's General Expenses w/ & w/o Legal or Extraordinary Expenses from Jan 12 through Dec 12	ADMIT	12/05/13
2011	Order Re: Dissolution of the Source Store,LLC and Related Matters	ADMIT	12/03/13
2015	2004 Payments to Prehn Bates Nos. Source I 5504 — Source I 5523	ADMIT	12/05/13
2016	2005 Payments to Prehn Bates Nos. Source I 5524 — Source I 5540	ADMIT	12/05/13

Also Included: Deposition of George Michael Brown

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs-Respondents, vs. MICHAEL L. HODGE II, Defendant-Appellant, and THE SOURCE STORE, LLC; THE SOURCE, LLC; GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Supreme Court Case No. 42465 CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ED GUERRICABEITIA
ATTORNEY FOR APPELLANT
BOISE, IDAHO

WILLIAM SMITH
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

4TH JUDICIAL DISTRICT COURT OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY

Date of Service: JUN 0 5 2015

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

DONNELLY PREHN and DWIGHT BANDAK, Plaintiffs-Respondents, vs. MICHAEL L. HODGE II, Defendant-Appellant, and THE SOURCE STORE, LLC; THE SOURCE, LLC; GEORGE M. BROWN; and CHRISTOPHER CLAIBORNE, Defendants.	Supreme Court Case No. 42465 CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 28th day of August 2014.

CHRISTOPHER D. RICH
Clerk of the District Court

By _____
Deputy Clerk

4TH JUDICIAL DISTRICT COURT - OF THE STATE - OF - IDAHO IN AND FOR ADA COUNTY